ANNUAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MICHIGAN

FOR THE

FISCAL YEAR ENDING JUNE 30, A. D. 1902.

HORACE M. OREN

ATTORNEY GENERAL

BY AUTHORITY

LANSING, MICH.
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1902

ATTORNEY GENERAL'S OFFICE.

HORACE M. OREN, Attorney General.

HENRY E. CHASE, Deputy.

CHARLES W. MCGILL, Chief Law Clerk.

ROGER IRVING WYKES.

GEORGE S. LAW.

TIMOTHY A. LAWLER.

WILLIAM C. KLUMPP.

DWIGHT B. HINCKLEY.

FRED H. HADRICH.

HENRY G. CASSEY.

ATTORNEYS GENERAL OF THE STATE OF MICHIGAN

SINCE 1836.

APPOINTED.

DANIEL LE ROY	July 18, 1836-1837
PETER MOREY	March 21, 1837-1841
ZEPHANIAH PLATT	March 4, 1841-1843
ELON FARNSWORTH	March 9, 1843-1845
HENRY N. WALKER	March 24, 1845-1847
EDWARD MUNDY	March 12, 1847-1848
GEORGE V. N. LOTHROP	April 3, 1848-1850

ELECTED.

WILLIAM HALE	1851-1854
JACOB M. HOWARD	1855-1860
CHARLES UPSON	1861-1864
ALBERT WILLIAMS	1865-1866
WILLIAM L. STOUGHTON	1867-1868
DWIGHT MAY	1869-1872
BYRON D. BALL (a)	1873-1874
ISAAC MARSTON	April 1, 1874-1874
ANDREW J. SMITH	1875-1876
OTTO KIRCHNER	1877-1880
JACOB J. VAN RIPER	1881-1884
MOSES TAGGART	1885-1888
STEPHEN V. R. TROWBRIDGE (b)	1889-1890
BENJAMIN W. HUSTON	March 25, 1890-1890
ADOLPHUS A. ELLIS	1891-1894
FRED A. MAYNARD	1895-1898
HORACE M. OREN	1899-1902

(a) Resigned April 1, 1874. Isaac Marston appointed to fill vacancy.

(b) Resigned March 25, 1890. Benjamin W. Huston appointed to fill vacancy.

ANNUAL REPORT.

STATE OF MICHIGAN.
Attorney General's Office,
Lansing, July 1, 1902.

To the Legislature of the State of Michigan:

In compliance with the law, I have the honor herewith to present the annual report of the business of this department for the fiscal year ending June 30, 1902; including an abstract of the official reports of the Prosecuting Attorneys of the Counties of the State, showing the number of prosecutions, convictions, acquittals, etc.

Two indexes have been prepared, one being a complete index of the report entire, the other an alphabetical table of the various cases which have come under the supervision or control of this department during the fiscal year.

Legal questions of a public character submitted to this department have been carefully considered and opinions rendered, a few of which, such as are deemed of interest to the public, are presented in this report, and represent but a small portion of the aggregate number of opinions prepared.

The various matters contained in this report are systematically arranged under the title of Schedule A. to S. inclusive, and classified as follows:

SCHEDULE A.—Statement of criminal and habeas corpus cases of which the Attorney General had charge during the fiscal year ending June 30, 1902.

SCHEDULE B.—Statement of mandamus cases of which the Attorney General had charge during the fiscal year ending June 30, 1902.

SCHEDULE C.—Statement of quo warranto proceedings, instituted by the Attorney General upon his own relation, or upon the relation of some other person, over which the Attorney General had supervision or control, during the fiscal year ending June 30, 1902.

SCHEDULE D.—Statement of chancery cases conducted by the Attorney General during the fiscal year ending June 30, 1902.

SCHEDULE E.—List of chancery and other cases referred to the Prosecuting Attorneys of the various counties in which commenced and left in their charge. These are tax cases wherein some State officer has been made a party, or in which the State has some interest.

SCHEDULE F.—Statement of assumpsit cases, appeals under inheritance tax law, certiorari cases, disbarment proceedings, ejectment cases, replevin cases, trespass cases, of which the Attorney General had charge during the fiscal year ending June 30, 1902.

SCHEDULE G.—Report of collection of Michigan's Spanish War Claim and Civil War Interest Claim against the United States.

SCHEDULE H.—Statement of money collected and turned over to the State Treasurer during the fiscal year ending June 30, 1902, through proceedings instituted in the Probate Courts of the respective counties, from estates which had escheated to the State under Act 238 Public Acts of 1897.

SCHEDULE I.—Statement of money collected and turned over to the State Treasurer, through the efforts of the Attorney General, with the co-operation of the Medical Superintendents of the various asylums, and the Judges of Probate of the various counties, during the fiscal year ending June 30, 1902, as a reimbursement to the State, for the support of certain insane persons at State asylums.

SCHEDULE J.—Statement of proceedings, during the fiscal year, ending June 30, 1902, for the deportation of certain insane persons, who were being maintained in the asylums of this State, pending the determination of the place of their legal residence.

SCHEDULE K.—List of Insurance Companies whose articles of association, amendments to articles of association, etc., have been approved during the fiscal year ending June 30, 1902, and a statement of the amount of money received as approval fees.

SCHEDULE L.—Statement of money collected and turned over to the State Treasurer, through the efforts of the Attorney General, also including the sum received as fees for approving articles of association, etc., of Insurance Companies, for the fiscal year ending June 30, 1902.

SCHEDULE M.—Official opinions, rendered during the fiscal year, which are deemed to be of general interest.

SCHEDULE N.—Abstract of the semi-annual reports of the Prosecuting Attorneys of the official business of the various counties, for the fiscal year ending June 30, 1902.

SCHEDULE O.—Recapitulation of the semi-annual reports of the Prosecuting Attorneys of the official business of their respective counties, during the fiscal year ending June 30, 1902.

SCHEDULE P.—List of counties and county seat, with name and address of Prosecuting Attorneys.

SCHEDULE Q.—Table of Cases, alphabetically arranged.

SCHEDULE R.—Index of names of opinions.

SCHEDULE S.—General Index to report, subjects of opinions, etc.

Respectfully submitted,

HORACE M. OREN,
Attorney General.

SCHEDULE A.

Statement of criminal and habeas corpus cases of which the Attorney General had charge during the fiscal year ending June 30, 1902.

CRIMINAL CASES IN THE SUPREME COURT OF THE UNITED STATES, DISPOSED OF UP TO JUNE 30, 1902.

CHARLES L. BERNARD v. THE PEOPLE OF THE STATE OF MICHIGAN.

Supreme Court of United States. Error to Supreme Court of State of Michigan.

Defendant was convicted of assault with intent to murder, in the Circuit Court for Van Buren County, State of Michigan, he appealed to the Supreme Court of Michigan; said conviction was affirmed. Motion for a re-hearing submitted and denied. Defendant then brings error. Submitted Dec. 26, 1901. Writ of error dismissed for want of jurisdiction, March 17, 1902.

CRIMINAL CASES IN THE SUPREME COURT OF THE UNITED STATES, PENDING JUNE 30, 1902.

August G. Reetz v. People of the State of Michigan (See 1901 report page 12, case of People v. Reetz.)

CRIMINAL CASES IN SUPREME COURT DISPOSED OF UP TO JUNE 30, 1902.

PEOPLE v. JAMES W. SLIGH.

Supreme Court. Error to Circuit Court. Calhoun County.

Defendant was convicted of robbery and attempted murder. Dismissed by stipulation June 30, 1902.

PEOPLE v. A. J. WHITE.

Supreme Court. Error to Circuit Court. Calhoun County.

Defendant was convicted of violating liquor law. Submitted Feb. 15, 1901. Affirmed July 10, 1901. (86 N. W. 992; 8 D. L. N. 397.)

PEOPLE v. WILLIAM M. BUTTS.

Supreme Court. Error to Circuit Court. Kent County.

Defendant was convicted of embezzlement. Submitted March 5, 1901. Affirmed Sept. 25, 1901. (87 N. W. 224; 8 D. L. N. 627.)

PEOPLE v. JOHN M. HIGGINS.

Supreme Court. Error to Circuit Court. Lenawee County.

Defendant was convicted of murder in first degree. Submitted Feb. 15, 1901. Affirmed July 2, 1901. (86 N. W. 812; 8 D. L. N. 289.)

PEOPLE v. JOSEPH GREGORY.

Supreme Court. Error to Circuit Court. Calhoun County.

Defendant was convicted of burglary. Submitted Nov. 21, 1901. Affirmed May 19, 1902. (90 N. W. 414; 9 D. L. N. 142.)

PEOPLE v. CHARLES J. LINDGREN.

Supreme Court. Error to Circuit Court. Ottawa County.

Defendant was convicted of keeping saloon open Sunday. Submitted Nov. 21, 1901. Reversed and new trial ordered, Dec. 3, 1901. (87 N. W. 1026; 8 D. L. N. 833.)

PEOPLE v. JOSEPH HENRY.

Supreme Court. Error to Circuit Court. St. Clair County.

Defendant was convicted of breaking and entering a saloon in the night-time, with intent to commit larceny. Submitted Nov. 21, 1901. Reversed and new trial ordered Dec. 10, 1902. (88 N. W. 77; 8 D. L. N. 866.)

PEOPLE v. F. P. BUNKER.

Supreme Court. Error to Circuit Court. Hillsdale County.

Defendant was convicted of a violation of a city ordinance. Submitted June 7, 1901; Conviction set aside and respondent discharged July 19, 1901. (87 N. W. 90; 8 D. L. N. 570.)

PEOPLE v. FRANK W. PALMER.

Supreme Court. Error to Circuit Court. Montcalm County.

Defendant convicted of forgery. Submitted June 7, 1901. Affirmed July 2, 1901. (86 N. W. 831; 8 D L. N. 327.)

PEOPLE v. ALBERT RADLEY.

Supreme Court. Error to Circuit Court. Muskegon County.

Defendant was convicted of being a disorderly person. Submitted June 7, 1901. Affirmed July 10, 1901. (86 N. W. 1029; 8 D L. N. 467.)

PEOPLE v. LANT K. SALSBURY.

Supreme Court. Error to Circuit Court. Kent County.

Proceeding to review an order of Kent Circuit Court, transferring bribery cause to Superior Court of Grand Rapids, for trial. Discontinued.

PEOPLE v. STILSON V. McLEOD.

Supreme Court. Error to Circuit Court. Kent County.

Proceeding to review an order of Kent Circuit Court, transferring cause to Superior Court of Grand Rapids for trial. Discontinued.

PEOPLE v. LANT K. SALSBURY.

Supreme Court. Error to Circuit Court. Kent County.

Proceeding to review an order of Kent Circuit Court, transferring cause for conspiracy to Superior Court of Grand Rapids for trial. Discontinued.

PEOPLE v. LANT K. SALSBURY, STILSON V. McLEOD, HENRY A. TAYLOR AND THOMAS F. McGARRY.

Supreme Court. Error to Circuit Court. Kent County.

Proceeding to review an order of Kent Circuit Court transferring cause to Superior Court of Grand Rapids for trial. Discontinued.

PEOPLE v. THOMAS F. McGARRY.

Supreme Court. Error to Circuit Court. Kent County.

Proceeding to review an order of Kent Circuit Court transferring cause to Superior Court of Grand Rapids for trial. Discontinued.

PEOPLE v. FRANK W. CURTIS.

Supreme Court. Error to Circuit Court. Van Buren County.

Defendant was convicted of selling liquor to a minor. Submitted Nov. 21, 1901. Affirmed Dec. 3, 1901. (87 N. W. 1040; 8 D L. N. 833.)

PEOPLE v. FRED NIELSON.

Supreme Court. Error to Circuit Court. Oceana County.

Defendant convicted of embezzlement. Submitted Feb. 21, 1902. Reversed and new trial ordered June 3, 1902. (9 D. L. 175.)

PEOPLE v. GEORGE RANKIN.

Supreme Court. Error to Circuit Court. Ottawa County.

Action for bastardy. Discontinued by consent of parties.

PEOPLE v. OLE FACKSNESS.

Supreme Court. Error to Circuit Court. Benzie County.

Defendant convicted of violating liquor law. Noticed for Jan. 1902 term. Case discontinued as defendant has served out his sentence.

PEOPLE v. HARLEY D. ROBERTSON.

Supreme Court. Error to Circuit Court. Hillsdale County.

Defendant convicted of obtaining money under false pretences. Submitted Feb. 21, 1902. Reversed and new trial ordered March 14, 1902. (89 N. W. 340; 8 D. L. N. 1071.)

PEOPLE v. SAMUEL BEACH.

Supreme Court. Error to Circuit Court. Ingham County.

Defendant convicted of assault with intent to commit rape. Submitted Feb. 21, 1902. Reversed and new trial ordered Mar. 4, 1902. (89 N. W. 363; 8 D. L. N. 1071.)

PEOPLE v. STEVEN S. HULBERT.

Supreme Court. Error to Circuit Court. Calhoun County.

Defendant was convicted on charge of polluting the waters of a lake. Submitted Feb. 21, 1902. Reversed and new trial ordered June 24, 1902. (9 D. L. N. 257.)

PEOPLE v. CHARLES H. UTELY.

Supreme Court. Error to Circuit Court. Newaygo County.

Defendant convicted of selling liquor, without filing druggist bond. Submitted Feb. 21, 1902. Verdict set aside, respondent discharged March 4, 1902. (89 N. W. 349; 8 D. L. N. 1077.)

PEOPLE v. JOHN SHILLMAN.

Supreme Court. Error to Circuit Court. Muskegon County.

Defendant convicted of violating pure food law. Submitted Feb. 21, 1902. Verdict set aside and new trial ordered Mar. 4, 1902. (89 N. W. 330; 8 D. L. N. 1090.)

PEOPLE v. JOHN W. MORSE.

Supreme Court. Error to Circuit Court. Muskegon County.

Defendant convicted of violating pure food law. Submitted May 8, 1902. Reversed and new trial ordered June 3, 1902. (90 N. W. 673; 8 D. L. N. 198.)

PEOPLE v. FREDERICK J. SHOEMAKER.

Supreme Court. Error to Circuit Court. Washtenaw County.

Defendant convicted of horse stealing. Submitted June 5, 1902. Affirmed June 17, 1902. (90 N. W. 1035; 9 D. L. N. 231.)

PEOPLE v. MASON SMITH.

Supreme Court. Error to Circuit Court. Benzie County.

Defendant convicted of resisting an officer. Submitted May 8, 1902. Affirmed June 3, 1902. (90 N. W. 1035; 9 D L. N. 231.)

PEOPLE v. HARPER S. CRAWFORD.

Supreme Court. Error to Recorder's Court of Detroit. Wayne County.

Defendant convicted of violating a city ordinance. Submitted May 2, 1902. Writ dismissed and remitted to court May 3, 1902.

PEOPLE v. WILLIAM VAN PELT.

Supreme Court. Error to Circuit Court. Wayne County.

Defendant convicted of violating game law. Submitted May 8, 1902. Affirmed May 19, 1902. (90 N. W. 424; 9 D L. N. 152.)

PEOPLE v. ALBERT SCOUTEN.

Supreme Court. Error to Circuit Court. Osceola County.

Defendant convicted of statutory rape. Submitted May 8, 1902. Affirmed May 10, 1902. (90 N. W. 332; 9 D L. N. 157.)

PEOPLE v. GEORGE W. ROTTER.

Supreme Court. Error to Circuit Court. Emmet County.

Defendant convicted of violating oleomargarine law. Submitted May 8, 1902. Affirmed June 24, 1902. (91 N. W. 167; 9 D. L. N. 284.)

PEOPLE v. JAMES H. GILLINGHAM.

Supreme Court. Error to Circuit Court. Iosco County.

Defendant convicted of unlawfully fishing with a pound net. Submitted May 8, 1902. Reversed and new trial ordered June 17, 1902. (90 N. W. 327; 9 D. L. N. 232.)

PEOPLE v. HENRY DUDLEY.

Supreme Court. Error to Circuit Court. Oceana County.

Defendant convicted of careless use of firearms. Submitted June 5, 1902. Affirmed June 24, 1902. (9 D. L. N. 309.)

PEOPLE v. JAMES H. BOGAN.

Justice Court. Violation of health law.

Defendant plead guilty. Fined $25.00 and costs.

CRIMINAL CASES IN SUPREME COURT, PENDING JUNE 30, 1902.

People vs. D. Judson Hammond. Attempt to commit bribery.
People vs. Charles H. Pratt. Bribery.
People vs. Davis M. Maze. Violating Liquor Law.
People vs. Hiram Bressler. Seduction.
People vs. John M. Phillips. Violating pure food law.
People vs. Abraham L. Spees. Murder.
People vs. Clayton Voorhis. Violation of Liquor Law.
People vs. Joseph Dupounce. Bastardy.
People vs. Charles Payne. Seduction.
People vs. Al. Elco. Statutory Rape.
People vs. Louis Gorsline. Bribery.
People vs. Otto E. Karste. Embezzlement.
People vs. Nelson R. Goodrode. Polygamy.
People vs. Arthur L. Rich. Assault with intent to commit rape.

HABEAS CORPUS CASES IN THE SUPREME COURT, DISPOSED OF UP TO JUNE 30, 1902.

IN THE MATTER OF LOUIS F. ARNO.

Supreme Court. Application for writ of habeas corpus.

Louis F. Arno was convicted of the crime carnally knowing and abusing a female child under the age of fourteen years, and sentenced to life imprisonment at hard labor at State Prison at Jackson. He was committed and remained in confinement until Dec. 31, 1900, upon which day his sentence was commuted by Hon. Hazen S. Pingree, then Governor of State of Michigan, to fifteen years' imprisonment, and the Governor on the same day issued a parole to said Louis F. Arno. Soon after his release report came to the Hon. Aaron T. Bliss, Governor of the State of Michigan that said Louis F. Arno was conducting himself in a manner

inconsistent with the terms of his parole. Upon investigation said information was found to be true and the Governor thereupon determined that Louis F. Arno had broken the conditions of his parole, and that his continuance at large was a menace to society, and an order of recommitment was issued by the Governor and said Louis F. Arno returned to State Prison at Jackson to serve out his sentence as commuted.

The principal question raised was the constitutionality of parole and conditional pardon laws generally, the arrest and recommitment of a convict who had broken the conditions of his parole. Submitted Oct. 8, 1901. Prisoner remanded to custody Oct. 9, 1901. (No opinion filed.)

IN THE MATTER OF THE PETITION OF EDWARD ASCHER ALIAS LOUIS LANG FOR WRIT OF HABEAS CORPUS.

Supreme Court. Certiorari to review an order of the Recorder's Court of the City of Detroit, discharging jury, and declaring a mistrial in the above case. Petitioner was on trial on the charge of murder, information came to the trial judge in relation to some of the jurors and the officers having charge of the jury, which led him to make an investigation. The findings of the trial judge showed that one juror wilfully concealed a material fact when asked about it, and when empaneled was not an impartial and unbiased juror; that he had repeatedly endeavored to influence some of his colleagues by criticising and ridiculing the testimony of witnesses, that he was guilty of furnishing some of his fellow jurors with an excessive quantity of liquor, and was guilty of procuring the intoxication of the officer in charge of the jury, and by reason of the intoxication of the officer the juror held unauthorized communication with persons not members of the jury.

The trial judge discharged the jury and remanded petitioner pending a new trial. Petitioner claimed the proceedings had in this case showed the respondent has been placed in jeopardy, and should be discharged. Submitted Feb. 20, 1902. Application for discharge denied, May 19, 1902. (90 N. W. 418; 9 D. L. N. 129.)

IN THE MATTER OF THE PETITION OF PHILIP LITTLE FOR WRIT OF HABEAS CORPUS.

Supreme Court. Petitioner was arrested on a charge of buglary while confined in the jail of Kent County, under a warrant issued from the United States Court, for the Northern District of Ohio, charging him with robbing post-offices in Michigan. He had been removed to the United States Court for Western District of Michigan to await the action of the grand jury. The United States Marshal for the Western District of Michigan, upon the presentation of the warrant, surrendered him to the jurisdiction of the State Courts for examination. Petitioner's counsel insist that upon his release by the United States Marshal he was entitled to return to the State of Ohio, from whence he was brought under the order and judgment of the Federal Court; and that he was by law entitled to a reasonable time and opportunity to return, and was, during that time privileged from arrest by the authorities of the State Courts. Submitted Jan. 28, 1902. Writ dismissed and prisoner remanded. (89 N. W. 38; 9 D. L. N. 1005.)

IN THE MATTER OF BLANCH B. COX FOR WRIT OF HABEAS CORPUS.

Supreme Court. Application for writ of habeas corpus and certiorari to the Recorder's Court of the City of Detroit, to review a sentence of that court for a violation of a city ordinance.

Defendant was tried by the Recorder without a jury and upon conviction was sentenced to pay a fine, in default thereof to imprisonment. Counsel questions the validity of the conviction upon the ground that she should have been tried by a jury. Submitted March 11, 1902. Writ dismissed March 13, 1902. (89 N. W. 440; 8 D. L. N. 1086.)

IN THE MATTER OF H. S. OSBORN FOR WRIT OF HABEAS CORPUS.

Supreme Court. Application for writ of habeas corpus.

The Attorney General filed an information in the nature of quo warranto against the League of Eligibles, a foreign corporation, acting under the name of League of Educators for the purpose of securing a judgment of ouster to prevent it from doing business in this State; judgment of ouster was entered in January, 1902. In April, 1902, for the purpose of enforcing this judgment the Attorney General filed a bill for an injunction against said corporation, and others including the petitioner; injunction was issued and served upon petitioner, he did not heed the same and was cited to appear and show cause why he should not be punished for contempt of court. After full hearing before the Circuit Judge he was found guilty and sentenced to pay a fine and in default thereof to be committed to county jail. Petitioner contends that proceedings should have been governed by provisions of Chapter 38 of Compiled Laws of 1897, and under Section 1099 the sentence is excessive and void. Submitted June 10, 1902. Writ dismissed, petitioner remanded, June 17, 1902. (90 N. ... 1029; 9 D. L. N. 244.)

CRIMINAL CASES IN JUSTICE COURTS, PENDING JUNE 30, 1902.

People vs. Samuel N. Bickerstaff. Perjury.
People vs. John R. Hunter. Perjury.
People vs. Hale P. Kauffer. Perjury.
People vs. Justin W. Woodworth. Perjury.

SCHEDULE B.

Statement of mandamus cases of which the Attorney General had charge during the fiscal year ending June 30, 1902.

MANDAMUS CASES IN THE SUPREME COURT OF THE UNITED STATES PENDING JUNE 30, 1902.

Michigan Sugar Company vs. Roscoe D. Dix, Auditor General.

Detroit, Fort Wayne and Belle Isle Railway vs. Chase S. Osborn, Commissioner of Railroads.

Grand Rapids and Indiana Railroad Co. vs. Chase S. Osborn, Commissioner of Railroads.

MANDAMUS CASES IN THE SUPREME COURT DISPOSED OF DURING FISCAL YEAR ENDING JUNE 30, 1902.

DETROIT, FORT WAYNE AND BELLE ISLE RY. v. COMMISSIONER OF RAILROADS.

Supreme Court. Application for writ of mandamus to compel the Commissioner of Railroads to vacate an order, which he had issued, ordering the construction of certain safety devices and apportioning the expense between the Terminal Association and the relator. Submitted Jan. 9, 1901. Writ denied July 2, 1901. (86 N. W. 842; 8 D. L. N. 343.) Case pending in United States Supreme Court.

HELEN L. KNEELAND v. ROSCOE D. DIX, AUDITOR GENERAL.

Supreme Court. Application for writ of mandamus to compel the Auditor General to cancel certain tax deeds. Answer filed showing Auditor General had made cancellation petitioned for.

EDWARD CAHILL v. BOARD OF STATE AUDITORS.

Supreme Court. Application for writ of mandamus to compel the Board of State Auditors to allow a claim for services as attorney. Sub-

mitted March 21, 1901. Writ denied July 10, 1901. (86 N. W. 950; 9 D. L. N. 388.)

WILLIAM O'CONNOR v. AUDITOR GENERAL.

Supreme Court. Application for writ of mandamus to compel the Auditor General to refund certain money. Submitted May 7, 1901. Writ denied July 10, 1901. (86 N. W. 1023; 8 D. L. N. 449.)

JACKSON AND SUBURBAN TRACTION CO. AND CITY OF JACKSON v. CHASE S. OSBORN, COMMISSIONER OF RAILROADS.

Supreme Court. Application for writ of mandamus to compel the Railroad Commissioner to vacate an order requiring an overhead crossing, etc. Submitted June 7, 1901. Writ denied July 19, 1901. (87 N. W. 133; 8 D. L. N. 565.)

THE CITIZENS' LIFE INSURANCE CO. v. JAMES V. BARRY, COMMISSIONER OF INSURANCE.

Supreme Court. Application for writ of mandamus to compel the Commissioner to issue a certificate. Submitted June 4, 1901. Writ denied July 19, 1901. (87 N. W. 126; 8 D. L. N. 544.)

CONTINENTAL VARNISH AND PAINT CO. v. FRED M. WARNER, SECRETARY OF STATE.

Supreme Court. Application for writ of mandamus to compel Secretary of State to file a certificate. Submitted Oct. 8, 1901. Writ denied Nov. 12, 1901. (87 N. W. 901; 8 D. L. N. 795.)

WILLARD E. WARNER v. BOARD OF STATE AUDITORS.

Supreme Court. Application for writ of mandamus to compel the Board of State Auditors to allow a claim for services to Board of State Tax Commissioners as an expert appraiser. Board of State Auditors allowed the bill at a certain amount. Relator asks for additional sum. Submitted Oct. 8, 1901. Writ denied Oct. 22, 1901. (87 N. W. 638; 8 D. L. N. 725.)

SAMUEL F. COOK v. PERRY F. POWERS, AUDITOR GENERAL.

Supreme Court. Application for writ of mandamus to compel the Auditor General to countersign a certificate issued to the relator by the Speaker and Clerk of the House of Representatives for mileage claimed to be due him as Journal Clerk during the regular session of 1901. Relator's legal residence is at Rock River, Alger County, he was Journal Clerk of the House during special session in December, 1900; that from the close of that session until the opening of the session of 1901, he was employed in assisting the Clerk of the House, and he had not been at Rock River since July 15, 1900, except for the purpose of casting his vote at the November election. Therefore respondent contends that relator did not travel from Rock River to Lansing for purpose of attending the session of the Legislature and refuses to countersign certificate. Sub-

mitted Nov. 12, 1901. Writ denied Dec. 3, 1901. (87 N. W. 1037; 8 D. L. N. 853.)

FRED M. WARNER, DANIEL McCOY AND EDWIN A. WILDEY, MEMBERS OF BOARD OF STATE AUDITORS, v. PERRY F. POWERS, AUDITOR GENERAL.

Supreme Court. Application for writ of mandamus to compel the Auditor General to draw his warrant for the payment of the salary of the members of Board of State Auditors, as Act 171, Laws of 1901, provides they shall receive. The question involved is the constitutionality of said act, if same is valid, writ will issue. Submitted Dec. 3, 1901. Writ denied March 18, 1902. (89 N. W. 591; 8 D. L. N. 1110.)

DONALD C McKINNON v. PERRY F. POWERS, AUDITOR GENERAL.

Supreme Court. Application for writ of mandamus to compel the Auditor General to cancel certain taxes, on an interest in land located with scrip, for which no patent had been issued which had been assessed as real property, and not as personal property as owner contends should have been. Submitted April 8, 1902. May 19, 1902, writ denied. (90 N. W. 329; 9 D. L. N. 177.)

ARTHUR G. TEMPLAR v. MICHIGAN STATE BOARD OF EXAMINERS OF BARBERS.

Supreme Court. Application for mandamus to compel the said board to receive an application of petitioner for examination, Act 212, Public Acts of 1899 provides that no person shall receive a certificate who at the time of such examination is an alien. The board refused to receive the application of the relator, on the ground that he was an alien. Counsel for relator contend that the act as pertains to prohibiting him from obtaining a certificate, entitling him to practice his calling, because he is not a full citizen of the United States, is denying him rights which he is entitled to under the fourteenth amendment, and therefore void. Submitted June 3, 1902. Writ issued, June 24, 1902. (90 N. W. 1058; 9 D. L. N. 300.)

WILLARD T. WARREN, TREASURER OF MONTMORENCY COUNTY, v. PERRY F. POWERS, AUDITOR GENERAL.

Supreme Court. Application for mandamus to require an adjustment between the State and County, upon the basis of a decree granted by the Circuit Court, on the petition for the sale of tax lands. Submitted June 17, 1902. Writ granted June 24, 1902. (90 N. W. 1063; 9 D. L. N. 248.)

CHASE S. OSBORN, COMMISSIONER OF RAILROADS, v. THE GRAND RAPIDS AND INDIANA RAILWAY COMPANY.

Supreme Court. Certiorari to Circuit Court, Kent County, to review an order of that court allowing writ of mandamus to compel the respondent railway company to reduce its passenger rates, in this State, from three to two and one-half cents per mile for distances exceeding five miles, under the provisions of subdivision ninth, of section nine of article two

of the general railroad law, Section 6234, C. L. 1897. It appeared from the report filed by the respondent of its business for the year ending December 31, 1900, that its total passenger earnings for Michigan exceeded two thousand dollars per mile. The order was made in a proceeding instituted by the filing by the Attorney General of a petition by relator, as Commissioner of Railroads of the State of Michigan, alleging that under the statute of Michigan it had become the duty of the railway company to reduce the passenger fares on its railway to two and one-half cents per mile. Respondent, however, refused to reduce its rates in compliance with the law, claiming that the statute of Michigan which purports to fix passenger fares at two and one-half cents per mile, without any inquiry or determination of the reasonableness of such rates, was in violation of the provision of the Constitution of the United States that no State shall deprive any person of property without due process of law, and that the maximum rate of charge to be made by railroad companies, which is fixed by statute, is unconstitutional and void, in that it makes no provision for a judicial investigation. That as applied to respondent the rate fixed is inadequate and unreasonable. That the act fixing the rates is void as a regulation of interstate commerce. A demurrer to these contentions was interposed upon the grounds that the incorporation of the respondent, the general act under which it was incorporated and the articles of association filed, constituted a contract between it and the State, one of the conditions of which was the agreement to carry passengers at the rate fixed by the statute. The demurrer was sustained by the Circuit Court. Thereupon respondent applied for the writ of certiorari, which was allowed. Order of the Circuit Court affirmed. (9 D. L. N. p. 10; 89 N. W. 967.) Case pending in the United States Supreme Court.

MANDAMUS CASES IN THE SUPREME COURT PENDING JUNE 30, 1902.

Schuyler S. Olds vs. William A. French, Commissioner of State Land Office.

Albert A. Griffin vs. Perry F. Powers, Auditor General.

Peter Radebaugh vs. Michigan State Board Registration in Medicine.

Isaac P. Newton vs. Perry F. Powers, Auditor General.

MANDAMUS CASES IN CIRCUIT COURTS DISPOSED OF UP TO JUNE 30, 1902.

RANSOM F. FILLMORE v. FRANK M. VAN HORN.

Circuit Court. Berrien County. Application for writ of mandamus to compel the delivery of certain books, records, etc., pursuant to chapter 272 of the Compiled Laws. Heard and order entered dismissing petition July 17, 1901. Carried to Supreme Court on certiorari.

CHASE S. OSBORN, COMMISSIONER OF RAILROADS, v. GRAND RAPIDS AND INDIANA RAILROAD CO.

Circuit Court. Kent County. Application for writ of mandamus to compel the defendant railroad company to reduce its rates of fare. Submitted Aug. 27, 1901. Writ granted Sept. 9, 1901.

Carried to Supreme Court on certiorari.

HORACE M. OREN, ATTORNEY GENERAL, EX REL. CLARENCE A. BLACK ET AL., v. THE COMMON COUNCIL OF THE CITY OF DETROIT.

Circuit Court. Wayne County. Application for writ of mandamus to compel the Common Council of the City of Detroit to fill certain alleged vacancies in the Board of Estimates of said city. The right of certain persons to sit as members of said board was challenged upon the ground that they having accepted employment in the Department of Public Works of said city, ipso facto vacated their offices as Estimators. Heard March 29, 1902. Writ granted March 31, 1902. (Opinion filed.)

MANDAMUS CASES IN CIRCUIT COURTS PENDING JUNE 30, 1902.

Chase S. Osborn, Commissioner of Railroads vs. Detroit, Grand Haven and Milwaukee Railway Company. Wayne County.

SCHEDULE C.

Statement of quo warranto proceedings, instituted by the Attorney General upon his own relation, or upon the relation of some other person, over which the Attorney General had supervision during the fiscal year ending June 30, 1902.

QUO WARRANTO CASES IN SUPREME COURT DISPOSED OF UP TO JUNE 30, 1902.

HORACE M. OREN, ATTORNEY GENERAL EX REL. STEINER C. GARTHE v. JAMES E. CAMPBELL.

Supreme Court. Error to Circuit Court. Leelanau County.

Quo Warranto Proceedings instituted to test title to office of Judge of Probate for Leelanau County. From judgment of ouster entered, respondent appeals. Submitted Jan. 8, 1902. Reversed and new trial ordered April 8, 1902. (89 N. W. 950; 9 D. L. N. 45.)

HORACE M. OREN, ATTORNEY GENERAL, EX REL. WILLIAM C. MAYBURY, MAYOR OF CITY OF DETROIT, ALEXANDER W. BLAIR, WILLIAM GEIST ET AL. v. ROBERT E. BOLGER.

Supreme Court. Quo Warranto Proceedings brought to oust respondent from office of commissioner of parks and boulevards of the City of Detroit. Submitted Sept. 24, 1901. Writ denied. Respondent's title to office confirmed October 1, 1901. (87 N. W. 446; 8 D. L. N. 675.)

HORACE M. OREN, ATTORNEY GENERAL, EX REL. HARVEY A. PENNY v. MATHEW GRAMLICH ET AL.

Supreme Court. Quo Warranto Proceedings to test title to office as Supervisors representing the City of Saginaw on the board of Supervisors of Saginaw County. Of the seven respondents, five are members of the board of review, one is city controller, and one is city attorney, all of whom were under the city charter as it existed prior to June, 1901,

members of the Board of Supervisors of Saginaw County entitled and authorized to represent the city upon that board. The Legislature of 1901 amended the charter so as to read "The assessor, controller, treasurer and aldermen of the fifth, sixth and seventh wards shall be members of the Board of Supervisors." The question presented being the constitutionality of the amendment, which if valid would entitle the relators to judgment. Submitted Feb. 18, 1902. Judgment for respondents, March 11, 1902. (89 N. W. 446; 8 D. L. N. 1098.)

QUO WARRANTO PROCEEDINGS, IN SUPREME COURT, PENDING JUNE 30, 1901.

Horace M. Oren, Attorney General ex rel. Edward N. Breitung vs. Iron Cliffs Co., Wm. G. Mather, William G. Mather, trustee for Iron Cliffs Co., Fred A. Morse, James H. Hoyt, Edwin B. Hale, and George A. Garreston.

Horace M. Oren, Attorney General on the relation of L. E. Kies, W. E. Alley, J. B. Strong, and Stephen McCleary vs. T. J. Lowrey, H. S. Walworth, C. H. Manzer, C. M. Bross, W. S. Bibbins and Jay Chandler.

QUO WARRANTO CASES IN CIRCUIT COURTS DISPOSED OF UP TO JUNE 30, 1902.

HORACE M. OREN, ATTORNEY GENERAL, EX REL. STEINER C. GARTHE v. JAMES E. CAMPBELL.

Circuit Court. Leelanau County. Quo Warranto Proceedings to test the title to the office of Judge of Probate for Leelanau County. Judgment of ouster entered. Appealed to Supreme Court.

HORACE M. OREN, ATTORNEY GENERAL, v. LEAGUE OF ELIGIBLES ACTING UNDER THE NAME OF LEAGUE OF EDUCATORS.

Circuit Court. Berrien County. Quo Warranto Proceeding to obtain judgment of ouster against a foreign corporation doing business in this State, without first filing articles of incorporation. Submitted Dec. 20, 1901. Judgment of ouster entered Jan. 20. 1902.

HORACE M. OREN, ATTORNEY GENERAL, ON THE RELATION OF L. E. KIES, W. E. ALLEY, J. B. STRONG AND STEPHEN McCLEARY v. T. J. LOWREY, H. S. WALWORTH, C. H. MANZER, C. M. BROSS, W. S. BIBBINS AND JAY CHANDLER.

Circuit Court. Hillsdale County. Quo Warranto Proceeding to test the title to the offices of Trustees or officers of the public schools of the village of Jerome, and ex-officio a board of school inspectors of the public schools of the village of Jerome. Submitted and judgment of ouster entered April 28, 1901. Taken to Supreme Court on error.

QUO WARRANTO CASES IN CIRCUIT COURTS PENDING JUNE 30, 1902.

Horace M. Oren, Attorney General, vs. The Tontine Surety Company of New Jersey. Wayne County.

Horace M. Oren, Attorney General vs. The Tontine Savings Association of Minnesota. Wayne County.

SCHEDULE D.

Statement of chancery cases conducted by the Attorney General during the fiscal year ending June 30, 1902.

CASES IN THE SUPREME COURT OF THE UNITED STATES, PENDING JUNE 30, 1902.

The United States of America vs. The State of Michigan.

Wisconsin and Michigan Railway Company vs. Perry F. Powers, Auditor General.

CHANCERY CASES IN THE CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION IN EQUITY, DETROIT, MICHIGAN, DISPOSED OF UP TO JUNE 30, 1902.

WISCONSIN AND MICHIGAN RAILWAY COMPANY v. PERRY F. POWERS, AUDITOR GENERAL.

The Circuit Court of the United States for the Eastern District of Michigan, Southern Division, in equity.

Bill for an injunction to restrain and enjoin Perry F. Powers, Auditor General of the State of Michigan, from collecting or attempting to collect any so called specific tax levied and assessed, or pretended to be levied and assessed against said railway company in the State of Michigan for the years 1897, 1898 and 1899. It appeared from the bill that the Menominee & Northern Railroad Company was created and organized under the general railroad law of the State of Michigan on October 23, 1893. That said Menominee & Northern Railroad Company sold and conveyed to the Wisconsin & Michigan Railway Company all of its property rights and franchises. That upon the sale and conveyance to the said Wisconsin & Michigan Railway Company, a railroad was constructed along the routes as described in the charter and articles of incorporation, and completed and put in operation on November 1, 1894. That any and all parts of this

railroad constructed in Michigan are situated north of the forty-fourth parallel of latitude. It is contended in the bill of complaint that an act was passed by the legislature of the State of Michigan in the year 1893 which was approved and took effect May 27, 1893, (Act 129 of the Public Acts of 1893) which constituted a contract between the said Wisconsin & Michigan Railway Company and the State of Michigan. This act provided, among other things, that the rate of taxation fixed by this act or any other law of this State shall not apply to any railroad company hereafter building and operating a line of railroad within this State north of parallel forty-four of latitude, until the same has been operated for the full period of ten years, unless the gross earnings shall equal four thousand dollars per mile. Further, that neither the Wisconsin & Michigan Railway Company nor the Menominee & Northern Railroad Company were in existence on said May 27, 1893, the date on which the above act took effect; that the gross earnings have never equaled four thousand dollars per mile, and that said railway company is entitled to the exemption above quoted; it is further contended that by reason of the above quoted act of the legislature there is in existence a valid contract between the said railway company and the State of Michigan which can not be impaired by virtue of the constitution of the United States of America and the constitution of the State of Michigan. But regardless of said railway company's rights the legislature of the State of Michigan passed an act, approved June 4, 1897, (Act 228 of the Public Acts of 1897) which repealed and abrogated said act approved May 27, 1893, including that provision under which said railway company was exempt from taxation for a period of ten years from and after November 1, 1894. Further, that the Commissioner of Railroads has made out and certified to the Auditor General of the State of Michigan a statement of what they term specific taxes, which said Auditor General has demanded and which he claims now constitutes a lien on all of said railway company's franchises in the State, and threatens that unless said railway company pay the same forthwith to the Treasurer of the State of Michigan that summary proceedings will immediately be instituted for the collection of such tax. Further, that the gross income received by said railway company by the operation of so much of its lines of railroad as lie and are situated within the State of Michigan is largely derived from the transportation of freight and passengers from points in said State of Michigan to points outside the State, and from points outside the State to points in the State of Michigan, which is and was interstate commerce, and that any attempt to tax the same by the State of Michigan, or its officers, is an interference with interstate commerce and is illegal and void under the constitution and laws of the United States. Demurrer to the bill of complaint was interposed. On May 1, 1902 an order was entered sustaining the first and second grounds of demurrer and dismissing the bill of complaint. (No opinion.) Case pending in the United States Supreme Court.

FRED A. MAYNARD, ATTORNEY GENERAL, v. GRANITE STATE PROVIDENT ASSOCIATION AND DAVID A. TAGGART, ASSIGNEE.

Circuit Court of the United States, Eastern District of Michigan, Southern Division in Equity.

Bill for appointment of receiver and auxiliary petition authorizing receiver to pay amount due and unpaid under the settlement decree. Sept. 10, 1901 order entered and receiver authorized to pay the sum of $3,287.03. (See this case as reported on page 33 in 1900 report.)

CHARLES ZIEMAN, M. D., v. STATE BOARD OF REGISTRATION IN MEDICINE, MANUEL J. PEREIRA AND GEORGE HALL.

Circuit Court of the United States, Eastern District of Michigan, Southern Division in Equity.

Petition praying for an injunction against defendants to restrain and enjoin them from instituting any proceedings calculated to deprive complainant of the use of copyright rights. Oct. 29, 1901 stipulation of discontinuance as to the State Board of Registration in Medicine filed. Motion to set aside stipulation of discontinuance was heard and denied Dec. 9, 1901.

CHANCERY CASES IN CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION IN EQUITY, DETROIT, MICHIGAN, PENDING JUNE 30, 1902.

Merritt Chandler v. Roscoe D. Dix, Auditor General, et al.

Edward W. Bishop v. The Michigan Savings and Loan Association, et. al.

CHANCERY CASES IN THE SUPREME COURT DISPOSED OF UP TO JUNE 30, 1902.

AUDITOR GENERAL v. JOHN M. HOFFMAN.

Supreme Court. Appeal from Circuit Court. St. Clair County.

Appeal from decree of Circuit Court, setting aside tax assessed for the construction of a sidewalk. Submitted Jan. 28, 1902. Affirmed March 4, 1902. (89 N. W. 348; 8 D. L. N. 1071.)

BOARD OF MANAGERS OF MICHIGAN SOLDIERS' HOME v. RICHARD O. JACKMAN.

Supreme Court. Appeal from Circuit Court. Kent County.

Appeal from decree of Circuit Court dismissing bill for injunction restraining defendant from interfering with a fence built by complainant as it claimed upon its own ground; finding of the court being that the fence stands wholly upon defendant's land. Submitted Oct. 10, 1901. Affirmed Dec. 3, 1901. (87 N. W. 1040; 8 D. L. N. 861.)

WILLIAM B. DIXON v. KIRK LUDINGTON, GRACE LUDINGTON, ROSCOE D. DIX, AUDITOR GENERAL, WM. A. FRENCH, COMMISSIONER OF STATE LAND OFFICE.

Supreme Court. Appeal from Circuit Court. Alcona County.

Appeal from decree of Circuit Court sustaining a demurrer and dismissing a bill to cancel a homestead deed. Submitted Dec. 13, 1901. Reversed and case remanded for further proceedings April 8, 1902. (89 N. W. 942; 9 D. L. N. 46.)

PERRY F. POWERS, AUDITOR GENERAL, v. THE SAGE LAND AND IMPROVEMENT COMPANY.

Supreme Court. Appeal from Circuit Court. Ogemaw County.

Appeal from decree of Circuit Court for the sale of certain lands for the taxes of the year 1898 as assessed thereon. Submitted Oct. 10, 1901. Affirmed Dec. 30, 1901. (88 N. W. 468; 9 D. L. N. 912.)

CHANCERY CASES IN SUPREME COURT, PENDING JUNE 30, 1902.

Perry F. Powers, Auditor General vs. Clifford and McCann.

Thomas F. Cole vs. Perry F. Powers, Auditor General.

George L. Maltz, Commissioner of Banking vs. City Savings Bank of Detroit, et al.

Ernestine Peters vs. Union Trust Co., Receiver, et al.

Perry F. Powers, Auditor General vs. Buckeye Iron Co.

Perry F. Powers, Auditor General vs. George Reichel, Henry Reichel, Anna Reichel.

CHANCERY CASES IN CIRCUIT COURTS DISPOSED OF UP TO JUNE 30, 1902.

WILLIAM B. DIXON v. KIRK LUDINGTON, ET AL., ROSCOE D. DIX, AUDITOR GENERAL, AND WM. A. FRENCH, COMMISSIONER OF STATE LAND OFFICE.

Circuit Court. Alcona County. In Chancery.

Bill to cancel homestead deed. Demurrer sustained and bill dismissed July 22, 1902. Appealed to Supreme Court.

HORACE M. OREN, ATTORNEY GENERAL, EX REL., ARTHUR M. GEROW ET AL., v. BOARD OF SUPERVISORS OF CHEBOYGAN COUNTY, ET AL.

Circuit Court. Cheboygan County. In Chancery.

Case settled.

HORACE M. OREN, ATTORNEY GENERAL, EX REL., JAMES C. ESLOW ET AL., v. CITY OF ALBION, WARREN S. KESSLER AND THE ALBION MALLEABLE IRON COMPANY.

Circuit Court. Calhoun County. In Chancery. Action to quiet title. Discontinued by stipulation Jan. 2, 1902.

THOMAS F. COLE v. PERRY F. POWERS, AUDITOR GENERAL.

Circuit Court. Ontonagon County. In Chancery. Petition for injunction to restrain Auditor General from issuing a certificate of error canceling certain tax deeds. Submitted Nov. 8, 1901. Injunction issued. Appealed to Supreme Court.

SEVENTH DAY ADVENTISTS' EDUCATIONAL SOCIETY OF BATTLE CREEK v. THE CITY OF BATTLE CREEK AND PERRY F. POWERS, AUDITOR GENERAL.

Circuit Court. Calhoun County. In Chancery.

Bill praying for an injunction to restrain the collection of taxes against certain property of the complainant. March 14, 1901, stipulation entered into by all parties as to what real property was exempt and what real property was subject to taxation for years 1900 and 1901. March 19, 1901. Decree in accordance with stipulation entered.

JOHN SEMER v. EDWIN A. WILDEY, COMMISSIONER OF STATE LAND OFFICE, AND PERRY F. POWERS, AUDITOR GENERAL, AND TEKLA EGSTROM SUNDERLIUS.

Circuit Court. Delta County. In Chancery.

Bill to cancel homestead deed. Jan. 4, 1902, demurrer filed. June 28, order overruling demurrer entered. Appeal to Supreme Court.

RICHARD O. JACKMAN v. THE BOARD OF MANAGERS OF THE MICHIGAN SOLDIERS' HOME, ET AL., AND GRAND RAPIDS RAILWAY COMPANY.

Circuit Court. Kent County. In Chancery.

Bill for an injunction restraining defendant from removing railway tracks and fence, and replacing same, and to declare said fence a nuisance. May 26, 1902, order dismissing case entered. Appealed to Supreme Court.

HORACE M. OREN, ATTORNEY GENERAL, v. LEAGUE OF ELIGIBLES, A FOREIGN CORPORATION ACTING UNDER THE NAME OF LEAGUE OF EDUCATORS, LEAGUE OF EDUCATORS SO CALLED, CHARLES A. HIGGINS, H. S. OSBORN, ELMER M. BARNES, C. FRANKLIN DAVIS, MARTIN J. BAXMAN, J. R. WYCKOFF AND JOHN VICKERS.

Circuit Court. Berrien County. In chancery.

Bill for an injunction restraining the defendants from conducting their class of business in Michigan. Heard and injunction granted April 12, 1902. Attachment issued for H. S. Osborn for violation of said injunction and said defendant found guilty of contempt, in that he continued said business, and sentenced to pay a fine and in default thereof committed to jail. Defendant applied to Supreme Court for writ of habeas corpus. (See page 16.)

CHANCERY CASES IN CIRCUIT COURTS, PENDING JUNE 30, 1902.

Fort Street Union Depot Company vs. Roscoe D. Dix, Auditor General. Ingham County.

The Detroit Union Railroad Depot Station Company vs. Roscoe D. Dix, Auditor General. Ingham County.

City of Lansing vs. Alamanzo A. Piatt and State Board of Auditors. Ingham County.

Horace M. Oren, Attorney General, ex rel., Osborn, Commissioner of Railroads vs. The Michigan Traction Company. Ingham County.

William E. Boice vs. John H. Bloomshield, and Wildey, Commissioner of State Land Office. Iosco County.

Pine River Lumber Company, et al., vs. Wildey, Commissioner of State Land Office et al. Iosco County.

George M. Dayton vs. Powers, Auditor General. Alpena County.

Herbert S. Reed vs. Powers, Auditor General. Alpena County.

George L. Maltz, Commissioner of the Banking Department of State of Michigan vs. City Savings Bank of Detroit, Frank C. Pingree, Frank

C. Andrews, Homer McGraw, Ward L. Andrus, Fred L. Osborn, Joseph Schrage and Henry R. Andrews. Wayne County.

Henry Platz vs. Perry F. Powers, Auditor General. Presque Isle.

John A. Widner vs. Wildey, Commissioner State Land Office, Charles W. Reynolds and George W. Myers. Alpena County.

Walter S. Pricket, vs. Powers, Auditor General, Edward W. Sparrow, et al. Ontonagon County.

Horace M. Oren, Attorney General ex rel., Wm. H. Beamer, et al., vs. D. W. H. Mooreland, Commissioner of Public Works of the city of Detroit. Wayne County.

Robert W. Dunn vs. Edwin A. Wildey, Commissioner State Land Office. Alcona County.

The Northwestern Cooperage and Lumber Company vs. The Township of Germfask, The Board of Supervisors of County of Schoolcraft, and Perry F. Powers, Auditor General. Schoolcraft County.

Horace M. Oren, Attorney General vs. League of Eligibles a foreign corporation acting under the name of League of Educators, League of Educators so called, Charles A. Higgins, H. S. Osborn, Elmer E. Barnes, C. Franklin Davis, Martin J. Baxman, J. R. Wyckoff, and John Vichers. Berrien County.

George Avery and Grant Martindale vs. Perry F. Powers, Auditor General, Edwin A. Wildey, Commissioner of State Land Office, Charles W. Reynolds and George Myers. Alpena County.

SCHEDULE E.

List of Chancery and other cases referred to the Prosecuting Attorneys of the various counties in which commenced and left in their charge. These are tax cases wherein some State officer has been made a party, or in which the State has some interest.

No. 1. Ezry H. Toland v. Auditor General, Chancery bill. Alpena County.

No. 2. Township of Grant, et al., v. County Treasurer and Auditor General. Chancery bill. Iosco County.

No. 3. Jacob Dardas v. Charles T. Smith and Auditor General. Chancery bill. Bay County.

No. 4. Robert Burgess v. County Treasurer, Drain Commissioner and Auditor General. Chancery bill. Sanilac County.

No. 5. George Goodrich v. The Wolverine Land Company, and the Auditor General. Bill to quiet title. Washtenaw County.

No. 6. George C. Jones and Benjamin T. Rogers, Jr., administrators for Michigan of the estate of Benjamin Talbot Rogers, deceased, v. Auditor General (Powers) and Thomas F. Cole. Ontonagon County.

No. 7. Eleanor S. G. Pratt. Chancery Petition. Bay County.

No. 8. Peter McGovern v. Perry F. Powers, Auditor General. Bill of complaint. Iron County.

No. 9. In the matter of the petition of the Auditor General of the State of Michigan for the sale of certain lands for taxes. Iosco County.

No. 10. In re petition of the Auditor General of the State of Michigan for the sale of lands for taxes assessed thereon for the year 1898 and previous years. Gratiot County.

No. 11. Catherine Hunt v. Perry F. Powers, Auditor General. Chancery petition. Gratiot County.

No. 12. In re petition of the Auditor General for the sale of certain lands, delinquent for taxes of 1896. Alpena County.

No. 13. In re petition of the Auditor General for the sale of certain lands for the taxes of 1895, 1896 and 1897. Auditor General v. Huron Land Company, Ltd. Alpena County.

No. 14. In re petitions of Thomas S. Sprague, and objections on the part of the estate of Albert Pack, deceased, Merritt Chandler, John J. Cathro, B. C. Morse, Huron Land Co., Ltd., Thomas S. Sprague, E. H. Tolan, William H. Johnson and Fred W. Wendt to the petition for the sale of certain lands for taxes. Alpena County.

No. 15. Frank G. Kneeland v. Rinaldo Knipe and Perry F. Powers, Auditor General of the State of Michigan. Declaration in ejectment. Isabella County.

No. 16. Frank G. Kneeland v. Carlisle Noble, Len M. Noble and Perry F. Powers, Auditor General of the State of Michigan. Declaration in ejectment. Isabella County.

No. 17. Frank G. Kneeland v. Charles Henry Walker, Hossie Walker and Perry F. Powers, Auditor General of the State of Michigan. Declaration in ejectment. Isabella County.

No. 18. In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1893. Everett Horton and Catherine J. Horton v. Perry F. Powers, Auditor General of the State of Michigan, and George F. Brown. Chancery petition. Alpena County.

No. 19. Auditor General (Perry F. Powers) of the State of Michigan v. J. A. Widner. Chancery petition. Alpena County.

No. 20. In re petition of the Auditor General for the sale of certain lands for taxes assessed thereon for the year 1899 and prior years. Franklin C. Parker v. Auditor General and County Drain Commissioners. Gratiot County.

No. 21. Henry Joseph Richter v. Auditor General. Chancery Bill. Alpena County.

No. 22. In re petition of Mary Barth, Administratrix of the estate of Nicholas Barth. Petition to set aside certain taxes. Marquette County.

No. 23. In re petition of the Auditor General for the sale of certain lands in Bay County for taxes of 1893 and 1894. Petition of Theophile Blondon. Bay County.

SCHEDULE F.

Statement of assumpsit cases, appeals under inheritance tax law, certiorari cases, disbarment proceedings, ejectment cases, replevin cases, and trespass cases, of which the Attorney General had charge during the fiscal year ending June 30, 1902.

ASSUMPSIT CASES, IN SUPREME COURT, DISPOSED OF UP TO JUNE 30, 1902.

THE PEOPLE v. ERNST L. SHURLEY.

Supreme Court. Error to Circuit Court. Wayne County.

Declaration in assumpsit against Ernst L. Shurley, defendant a physician to recover a penalty for the violation of Section 4453 of the Compiled Laws of 1897, in neglecting to report to the health officer the existence of a case of consumption, a disease claimed to be contagious and within the meaning of said section, which had come under his care and treatment. Defendant had verdict. Submitted Feb. 21, 1902. Reversed and new trial ordered June 24, 1902. (91 N. W. 139; 9 D. L. N. 253.)

The above case was reversed on a former hearing before the Supreme Court. See 124 Mich. 487 and 1901 Attorney General's report, page 32.

CERTIORARI CASES, IN SUPREME COURT, DISPOSED OF UP TO JUNE 30, 1902.

RANSOM M. FILLMORE v. FRANK M. VAN HORN.

Supreme Court. Certiorari to Circuit Court. Berrien County.

Proceeding to review an order dismissing a petition filed by relator against respondent as Secretary of the State Board of Examiners of Barbers to compel said respondent to deliver the books, records, etc., to the relator who claimed to hold title, by virtue of Act 235, Laws of 1901, under which law he was elected secretary and treasurer. Respondent was secretary of said board under Act 212 Laws of 1899. The Act of 1901 would if valid repeal the act of 1899; the Circuit Court held the act of 1901 unconstitutional and dismissed the petition. Submitted Nov. 13, 1901. Affirmed Dec. 3, 1901. (88 N. W. 69; 8 D. L. N. 826.)

CHASE S. OSBORN, COMMISSIONER OF RAILROADS, v. GRAND RAPIDS AND INDIANA RAILROAD COMPANY.

Supreme Court. Certiorari to Circuit Court. Kent County.

Proceeding to review an order granting the petition of the Auditor General for a mandamus compelling the Grand Rapids & Indiana Railroad Company to reduce its rates of fare. Respondent company was organized July 15, 1896, by the purchasers of the property of the Grand Rapids & Indiana Railroad Company, on foreclosure of a mortgage, and claims it succeeded to all of the rights and privileges of said company. At the time the mortgage was given the only limitation on the power to fix rates of fare was that it should not exceed three cents per mile, under the railroad laws in force when reorganization of the company was effected, the rates of fare were regulated by the earnings of the company's passenger trains, if more than two thousand dollars per mile, the rate to be two and one-half cents per mile. Relator contended that by a reorganization after the foreclosure of the mortgage, under the railway law then in force the company became entitled to all the power and rights, under said act and subject to all of its provisions. Submitted Dec. 10, 1901. Affirmed April 8, 1902. Taken to Supreme Court of United States by writ of error.

IN THE MATTER OF FRANK C. ANDREWS.

Supreme Court. Common Law Certiorari.

Writ of certiorari directed to the Sheriff of Wayne County and one of the Police Judges of the city of Detroit. Heard March 4, 1902, and petition withdrawn.

CERTIORARI CASES, IN SUPREME COURT, PENDING JUNE 30, 1902.

Flint Land Company, Limited vs. Perry F. Powers, Auditor General.

DISBARMENT PROCEEDINGS, IN SUPREME COURT, DISPOSED OF UP TO JUNE 30, 1902.

IN THE MATTER OF DISBARMENT OF ELBERT S. ROOS.

Supreme Court. Petition for disbarment for the reasons that defendant was present at the meetings of the Henderson-Ames Company when the proposition to defraud the State by the sale and repurchase of certain military stores of the State of Michigan, was discussed and accepted. That he contributed a certain sum of money as his share to a fund to be deposited in a bank to give color to a story to be told the grand jury (then in session), that the proceeds of the said fraud had not been distributed. That he was present at a certain meeting of the directors, at which a plan

of action was arranged and it was agreed that perjury should be committed by the said directors of said company and other persons, to deceive the grand jury. That he assisted in the organization of the Illinois Supply Company for the purpose of accomplishing the fraud practiced on the State. Submitted June 4, 1902. Order of disbarment entered (no written opinion). June 27, 1902.

DISBARMENT PROCEEDINGS, IN SUPREME COURT, PENDING JUNE 30, 1902.

In the matter of disbarment of Lant K. Salsbury.

EJECTMENT CASES, IN SUPREME COURT, DISPOSED OF UP TO JUNE 30, 1902.

STATE OF MICHIGAN v. THE LAKE ST. CLAIR FISHING AND SHOOTING CLUB ET AL.

Supreme Court. Error to Circuit Court. St. Clair County.

Action in ejectment. The State contended that the premises in this suit were "Swamp and Overflowed Lands;" that it had sufficient title to maintain ejectment under the Swamp Land Act; and that the title accrued within twenty years. Plaintiff had verdict. Submitted Jan. 10, 1902. Affirmed July 10, 1902. (87 N. W. 117; 8 D. L. N. 373.)

STATE OF MICHIGAN v. DON M. DICKINSON AND FRANK GUELLET.

Supreme Court. Error to Circuit Court. St. Clair County.

Action in ejectment. The State brought action to recover certain lands situated on Stromness or Dickinson Island, being a part of St. Clair Flats in St. Clair County. Defendants had judgment. Submitted Nov. 21, 1901. Affirmed Dec. 30, 1901. (88 N. W. 621; 8 D. L. N. 922.)

PROHIBITION CASES, IN SUPREME COURT, DISPOSED OF UP TO JUNE 30, 1902.

AUGUSTUS C. STELLWAGEN, ADMINISTRATOR OF THE ESTATE OF CHRISTOPHER MOROSS, v. EDGER O. DURFEE, PROBATE JUDGE OF WAYNE COUNTY.

Supreme Court. Certiorari to Circuit Court. Wayne County.

Proceeding to review an order dismissing an appeal for writ of prohibition to Edgar O. Durfee, Probate Judge. (See 1901 report, pages 32, 33.) Submitted Nov. 21, 1901. Affirmed March 26, 1901. (89 N. W. 728; 8 D. L. N. 1204.)

EDWIN A. WILDEY, COMMISSIONER OF STATE LAND OFFICE, v. PERRY F. POWERS, AUDITOR GENERAL.

Supreme Court. Application for writ of prohibition to prohibit the Auditor General from canceling certain tax deeds, issued under the homestead provision of the tax law. Submitted Feb. 11, 1901. Writ granted June 24, 1902. (91 N. W. 153; 9 D. L. N. 249.)

ASSUMPSIT CASES, IN CIRCUIT COURTS, PENDING JUNE 30, 1902.

The People vs. Charles L. Coffin. Assumpsit. Wayne County.
The People vs. James G. Barton. Assumpsit. Wayne County.
The People vs. Henry Merdian. Assumpsit. Wayne County.
The People vs. Charles R. Wilson. Assumpsit. Wayne County.
The People vs. Joseph F. Doyle. Assumpsit. Wayne County.
The People vs. Oliver M. Gardner. Assumpsit. Wayne County.
The People vs. Charles C. Canny. Assumpsit. Wayne County.
The People vs. Hugh O'Connor. Assumpsit. Wayne County.
The People vs. Ernst L. Shurley. Assumpsit. Wayne County.

Daniel McCoy, Treasurer of the State of Michigan vs. Frank C. Pingree, Frank C. Andrews, Homer McGraw, Fred S. Osborne, Ward L. Andrus, Joseph Schrage and Henry R. Andrews. Assumpsit. Wayne County.

George A. Loud, Henry M. Loud, Edward F. Loud, co-partners, doing business under firm name of H. M. Loud's Sons v. Edwin A. Wildey, Commissioner of State Land Office, Perry F. Powers, Auditor General, Peter E. Shien, State Trespass Agent and George F. Russell, State Trespass Agent. Assumpsit. Iosco County.

George A. Loud, Henry M. Loud and Edward F. Loud, co-partners, doing business under firm name of H. M. Loud's Sons v. Edwin A. Wildey, Peter Shien and George F. Russell. Assumpsit. Iosco County.

EJECTMENT CASES, IN CIRCUIT COURT, DISPOSED OF UP TO JUNE 30, 1902.

EMELINE M. GRANT v. CHARLES L. FRENCH.

Circuit Court. Bay County. Ejectment.

Ejectment proceedings against a homesteader. Case settled by parties and stipulation of discontinuance filed August 28, 1901.

EJECTMENT CASES, IN CIRCUIT COURTS, PENDING JUNE 30, 1902.

Jane A. Sheldon vs. John D. Dingman. Arenac County.

George E. Ranney vs. Earl Griffis. Oceana County.

Charles B. Williams et al vs. Anson Love, and Roscoe D. Dix, Auditor General. Alpena County.

Andrew C. Maxwell vs. John LaMie. Arenac County.

PROHIBITION CASES, IN CIRCUIT COURTS, DISPOSED OF UP TO JUNE 30, 1902.

THE PEOPLE EX REL. HORACE M. OREN, ATTORNEY GENERAL v. THE COMMON COUNCIL OF THE CITY OF GRAND RAPIDS AND LEO A. CARO, CITY COMPTROLLER.

Circuit Court. Kent County. Application for writ of prohibition by the Attorney General to prohibit and restrain the Common Council of Grand Rapids and Leo A. Caro the City Comptroller of said city, from allowing or paying or issuing orders to any alderman of said city, for the making or procuring to be made of jury lists, physicians' lists, or dog list. Submitted. Writ issued September 11, 1901.

REPLEVIN CASES, IN CIRCUIT COURTS, PENDING JUNE 30, 1902.

William C. Sterling v. Menzo Swart, Arenac County.

TRESPASS CASES, IN CIRCUIT COURTS, DISPOSED OF UP TO JUNE 30, 1902.

JOHN NEAL v. GRANT M. MORSE AND THEODORE TRUDELL, GAME WARDENS.

Circuit Court. Bay County. Action for damages for the destruction of fish nets. Judgment rendered for plaintiff. Case removed to Supreme Court on writ of error.

TRESPASS CASES, IN CIRCUIT COURTS, PENDING JUNE 30, 1902.

People of State of Michigan vs. George B. Holmes and John Nicholson, co-partners. Alpena County.

APPEALS UNDER INHERITANCE TAX LAW (ACT 188 PUBLIC ACTS 1899), DISPOSED OF UP TO JUNE 30, 1902.

In the matter of estate of Nicholas Larzalier (deceased). Macomb County. Claim of Appeal filed July 5, 1901. Tax in dispute paid by the estate.

In the matter of the estate of Horace Richmond (deceased). Clinton County. Claim of appeal filed Nov. 26, 1901. Settled April 28, 1902.

APPEALS UNDER INHERITANCE TAX LAW (ACT 188 PUBLIC ACTS, 1899), IN CIRCUIT COURTS, PENDING JUNE 30, 1902.

In the matter of the estate of John A. Thorp, deceased. St. Joseph County.

In the matter of estate of Julia A. Edson. Wayne County.

In the matter of estate of Henry W. Merriam. Wayne County.

SCHEDULE G.

REPORT OF COLLECTION OF MICHIGAN'S SPANISH WAR CLAIM AND CIVIL WAR INTEREST CLAIM AGAINST THE UNITED STATES.

Hon. Horace M. Oren, Attorney General, Lansing, Michigan:

My Dear Sir—In accordance with your request I submit herewith report of collection of Michigan's Spanish War claim and Civil War interest claim against the United States, as follows:

SPANISH WAR CLAIM.

In my last report to you covering the period from March 7, 1901 to July 1, 1901, I explained the nature and condition of the Spanish war claim somewhat in detail. In that report the amounts uncollected and not settled by the accounting officials of the Treasury Department were given as follows:

Second installment	$81,494 46
Third installment	12,433 98
	$93,928 44

This report covers the period from July 1, 1901 to July 1, 1902. During that time the second installment has been entirely settled and the third installment nearly so. No payments were made during the year upon the third installment, but my information is that it has been passed upon by the examiner and that the reviewer has nearly finished his work. I expect a final adjustment by the Treasury Department in the course of a few days.

The second installment has been entirely settled and the sum of $25,859.59 has been collected—the balance having been disallowed.

The balance of this installment was disallowed for the reason that the expenses were incurred by the State for troops after they were mustered into the United States service and without authority from the war department.

The allowances on the second installment were made upon the following dates and in the following amounts:

December 19, 1901	$24,045 29
June 9, 1902	1,814 30
Total amount	$25,859 59

The following is a statement showing for what expenditures the above payments were made:

Naval Reserves, clothing and equipment.....	$15,124 02
Subsistence after troops were mustered into United States service and before United States Commissary was ready to subsist.....	7,174 31
Pay of Naval Reserves.....	1,746 96
Miscellaneous	1,814 30
Total	$25,859 59

All that remains of the Spanish war claim to be settled is the third installment covering "Transportation" and amounting to $12,433,98. The total amount collected by me to date is $377,342.58.

CIVIL WAR INTEREST CLAIM.

On July 1, 1861 the State issued $1,249,400 of bonds, bearing interest at 7 per cent per annum, payable semi-annually. The issue was authorized by an act of the Legislature passed at an extra session on May 10, 1861. The bonds were redeemable at the "pleasure of the State" at any time within, or at the expiration of 25 years from January 1, 1861.

The proceeds from the sale of these bonds were used to organize, and equip Michigan's volunteer regiments for service in the War of the Rebellion. Congress provided by an act approved July 27, 1861, and joint resolution approved March 8, 1862 for the reimbursement of the states of expenses incurred by them in aiding the United States in suppressing the insurrection. Michigan presented claims amounting to $1,203,768.32 and was allowed and paid $849,277.43. Among the items disallowed was interest paid by the State on the above mentioned bonds to August 20, 1866, and also loss suffered by discount upon the sale of the bonds, all of which amounted to $320,488.32. I have been unable to ascertain why interest only to August 20, 1866 was presented, instead of the entire amount of interest paid out by the State. Subsequently the United States Supreme Court in the case of the State of New York decided that interest upon war loan bonds should be reimbursed to the states by the United States. It was found, however, that Michigan's claim having been once disallowed could not, under the practice of the Treasury Department, be reopened and allowed under the decision of the Supreme Court of the United States. Co-operating with several other states we succeeded in having an act passed by Congress on February 14, 1902, reopening our claim, in common with those of other states, and authorizing the Secretary of the Treasury to examine and allow it.

I assume that in this report you merely wish the essential facts and I will not, therefore, describe in detail the steps which it was necessary for us to take in order to secure the enactment of the enabling act by Congress to reopen the claim in the Treasury Department, and the nature and amount of proof which we found it necessary to collect and present

to the Comptroller of the Treasury and the Auditor for the War Department in accordance with the established practice and regulations of that department.

The work of preparing the claim was commenced about February 14, 1902 and the claim was settled and certified to Congress for appropriation on June 6, 1902 in the sum of $382,167.62. Governor Bliss has received check for this amount.

Respectfully submitted,

RALPH STONE,

Agent for Michigan.

SCHEDULE H.

Statement of money collected and turned over to the State Treasurer during the fiscal year ending June 30, 1902, through proceedings instituted in the Probate Courts of the respective counties, from estates which had escheated to the State under Act 238, Public Acts of 1897:

Allegan County:		
George White estate		$55 96
Berrien County:		
Henry Smith estate		485 73
Hillsdale County:		
Lewis S. Keith estate	$3 69	
James Blass estate	8 26	
Isaiah Green estate	2 95	
T. Kronkite estate	4 30	
Mathew Gregan estate	22 08	
Anna McManus estate	29 05	
Mary C. Britton estate	40 93	
		111 26
Kent County:		
William Fuller estate	$4 45	
John H. Dolan estate	50	
John Heyer estate	1 48	
Joseph Fellows estate	49	
Rachel Lapham estate	25 65	
Ed. Leeland estate	190 13	
Mary Radeke estate	7 32	
		230 02
Livingston County:		
Peter J. Faze estate	$42 93	
Louisa Sherman estate	43 38	
John Weimaster estate	86 07	
		172 38
Marquette County:		
Charles G. Flack estate	$14 47	
A. Olson estate	9 90	
		24 37
St. Joseph County:		
Jane Falker estate Sarah O. Thompson estate		15 69
		$1,095 41

SCHEDULE I.

Statement of money collected and turned over to State Treasurer, through the efforts of the Attorney General, with the co-operation of the medical superintendents of the various asylums and the judges of probate of the various counties, during the fiscal year ending June 30, 1902, as a reimbursement to the State for the support of certain insane persons at State asylums.

EASTERN MICHIGAN ASYLUM FOR THE INSANE AT PONTIAC.

Estate of—		
John Cooper of Lapeer County	$400 00	
Elias A. Brockway of Livingston County	56 90	
Gideon Martin of Livingston County	261 17	
Latitia Sheep of Livingston County	81 73	
Jane Fox of Macomb County	956 39	
Mary Jane McQuade of Macomb County	98 41	
Wm. H. Horton of Oakland County	983 21	
Grace M. Noble of Oakland County	435 16	
George L. Swindt of Saginaw County	186 83	
Jane Folkert of St. Clair County	982 56	
John A. Frey of Washtenaw County	170 60	
Avis E. Woodruff of Wayne County	160 31	
		$4,773 27

MICHIGAN ASYLUM FOR THE INSANE AT KALAMAZOO.

Estate of—	
Margaret Fax of Allegan County	$9 05
Elias Porter of Allegan County	72 00
John Donahue of Berrien County	113 15
Margaret Leeland of Branch County	71 82
Lavinia Failing of Calhoun County	240 00
Beuthusan Van of Calhoun County	209 52
Abraham White of Clinton County	93 10
Martha Averill of Eaton County	165 96
Henry L. Field of Eaton County	180 00
Herbert J. Lord of Eaton County	40 93
Alex. Sherman of Eaton County	96 48

Peter B. Anthony of Ingham County....	$95 96	
Fannie McKinley of Jackson County.....	40 64	
Michael Hoy of Kalamazoo County.....	177 05	
Mary A. Stanley of Kalamazoo County....	120 00	
Lewis M. Bark of Kent County.....	128 78	
Harriet M. Bates of Kent County.....	612 00	
James H. Bass of Kent County.....	400 00	
Maggie Post of Lenawee County.....	108 00	
Lucius C. Hotchkiss of Monroe County....	95 50	
David Schweigert of Saginaw County.....	200 00	
J. W. Fitzgerald of County not reported..	36 00	
		$3,305 94

NORTHERN MICHIGAN ASYLUM FOR THE INSANE AT TRAVERSE CITY.

Estate of—		
Luke McNearney of Isabella County.....	$151 65	
Henrietta Jaschke of Manistee County....	775 00	
Addie E. Snyder County not reported....	100 01	
		1,026 66

UPPER PENINSULA HOSPITAL FOR THE INSANE AT NEWBERRY.

Estate of—	
Margaret Ann Demming of Mackinac County.....	108 00
	$9,213 87

SCHEDULE J.

Statement of proceedings, during the fiscal year ending June 30, 1902, for the deportation of certain insane persons, who were being maintained in the asylums of this State, pending the determination of the place of their legal residence.

IN THE MATTER OF ELIZA A. HALL, AN INSANE PERSON.

Proceedings for deportation of Eliza A. Hall an insane person, from Michigan to Nebraska. Eliza A. Hall was committed to the Northern Michigan Asylum for the Insane at the expense of the State on order from Probate Court from Cheboygan County, commitment gave her legal residence as Nebraska. Matter taken up with the authorities of that State and arrangement made that she be received at the Nebraska Hospital for the Insane at Lincoln, Nebraska, she was subsequently transferred there.

IN THE MATTER OF WM. V. EDWARDS, AN INSANE PERSON.

Proceedings for deportation of Wm. V. Edwards, an insane person, from Michigan to Illinois. Wm. V. Edwards was admitted to the Michigan Asylum for the Insane at Kalamazoo at State expense, as an indigent insane person on order of Probate Court of Eaton County. This man escaped from the Illinois Eastern Hospital at Kankakee in June, 1901, application made to the authorities of that institution to receive him was refused under a rule that no patient who had been absent from the institution longer than ninety days could be taken back without a new order. The matter was taken up with the Attorney General of Illinois and arrangements made to receive Mr. Edwards at the institution from which he escaped, he was subsequently taken there by the asylum authorities.

IN THE MATTER OF EDWARD F. BYERS, AN INSANE PERSON.

Proceedings for deportation of Edward F. Byers an insane person, from Michigan to Wyoming. Edward F. Byers was admitted to the Michigan Asylum for the Insane at Kalamazoo at the expense of the County of Van Buren, on order of the Probate Court of that County until his legal residence should be ascertained. Proofs in case show that Edward F. Byers went to Wyoming with his parents in year 1888, and lived there until March, 1893, when he became insane and was sent to the Asylum for the Insane at Evanston, Wyoming, remaining there until June, 1901. He was released by the superintendent of that institution and his fare paid

to Omaha, Neb., from there his fare was paid to Lawton, Michigan, by his mother, who had preceded him to Michigan by two years, after his arrival here was cared for by his relatives, and on becoming violent, application made for his admittance to the asylum in this State. Matter taken up with the Governor of Nebraska and arrangement made for his return to the asylum in Nebraska.

IN THE MATTER OF DANIEL FLYNN, AN INSANE PERSON.

Proceedings for deportation of Daniel Flynn, an insane person, from Michigan to Ohio. Daniel Flynn was committed to the Michigan Asylum for the Insane at Kalamazoo as an indigent insane person, on the order of the Probate Court of Lenawee County at the expense of that county. It appeared from the sworn statement that Daniel Flynn had been an inmate of the asylum at Toledo, Ohio, investigation was had and developments showed that he had been discharged from that institution "as recovered," he came to Michigan, obtained employment, seemed to be perfectly sane, and gained a residence in the State, after living in this State for over a year, again became insane, he having been sane on his arrival and as he had acquired a legal residence in this State, proceedings for deportation were dropped.

IN THE MATTER OF MARY E. BOWSHER, AN INSANE PERSON.

Proceedings for deportation of Mary E. Bowsher, an insane person, from Michigan to Ohio. Mary E. Bowsher was committed to the Northern Michigan Asylum for Insane at Traverse City by the Probate Court for the County of Arenac, which found that she had not acquired a legal residence in the State, but had a legal residence in Paulding County, Ohio. Investigation developed that Mrs. Bowsher arrived at Saganing, Arenac County, about the 13th day of May, 1899, becoming insane within a very short time, she was committed to said asylum on January 14, 1900. Affidavits establishing the residence of Mrs. Bowsher in Ohio were procured and presented to the Governor of that State, who laid the matter before the General Assembly, which passed a resolution authorizing the superintendent of the Toledo State Hospital to receive and care for her as a State charge. She was transferred on the 26th day of May, 1902.

IN THE MATTER OF LETTIE TATUM, AN INSANE PERSON.

Lettie Tatum was admitted to the Michigan Asylum for the Insane at Kalamazoo, to be maintained at the expense of the State of Michigan until her legal residence could be established, as an indigent insane person; by order of the Probate Court from County of Calhoun. The facts of this case as near as can be ascertained are that Lettie Tatum came to the Battle Creek Sanitarium for treatment, she remained there for some time, as a charity patient, she left the institution, but later on returned. She claimed her father, mother, brothers and sisters were dead and that she had no relatives, and since her mother's death she had been going from place to place trying to obtain relief from insomnia and nervousness, her address was given as San Antonio, Texas. Letters of inquiry have been written to various persons at that place, as well as many others, by which we have sought to obtain sufficient evidence to establish her legal residence; a

number of answers have been received, but none of which contain any definite information or disclose any person who might be a relative to whose care she might be entrusted.

IN THE MATTER OF WM. H. DARLING, AN INSANE PERSON.

William H. Darling was arrested on the streets of Vicksburg, Kalamazoo County, being in a dazed condition, inquiry developed the facts that his home was in Chicago, Ill., and that he had formerly been an inmate of the Elgin Insane Asylum; correspondence was entered into with the authorities of that asylum and they refused to receive him on the ground that he had been paroled and discharged, he was subsequently delivered in Chicago to the Sheriff of Cook County, Ill.

PROCEEDINGS FOR DEPORTATION OF INSANE PERSONS, PENDING JUNE 30, 1902.

In the matter of Minnie M. Andrews, an insane person, claimed to be a resident of Missouri.

In the matter of Joseph Martin, an insane person, claimed to be a resident of California.

SCHEDULE K.

List of insurance companies whose articles of association, amendments to articles of association, etc., have been approved during the fiscal year ending June 30, 1902, and a statement of the amount of money received as approval fees:

American Benevolent Association. (Name changed to) American Health & Accident Insurance Company. Amendment to articles of association. Approved July 11, 1901. Approval fee, $5.

Northern Michigan Benefit Association of Manistique. Amendment to articles of association. Approved July 29, 1901. Approval fee, $5.

Michigan Millers Mutual Fire Insurance Co. of Lansing, Michigan. Amendment to articles of association. Approved July 29, 1901. Approval fee, $5.

Monroe & Lenawee County Farmers' Mutual Fire Insurance Company. Amendment to charter and by-laws. Approved Oct. 1, 1901. Approval fee, $5.

Peninsular Accident Society of Bay City. Articles of association approved Oct. 1, 1901. Approval fee, $5.

Farmers' Mutual Fire Insurance Company of Calhoun County. Amendment to articles of association. Approved Nov. 4, 1901. Approval fee, $5.

Patrons' Mutual Fire Insurance Company of Gratiot County. Articles of association. Approved March 4, 1902. Approval fee, $5.

Ann Arbor Sick and Accident Benefit Association of Ann Arbor. Articles approved Jan. 9, 1902. Approval fee, $5.

Farmers' Mutual Fire Insurance Company of Ionia. Amendment to charter. Approved Jan. 24, 1902. Approval fee, $5.

Monitor Insurance Company of Oakland County. Amendment to charter. Approved Jan. 23, 1902. Approval fee, $5.

Grangers' Mutual Fire Insurance Company, (Limited) of Newaygo and Muskegon Counties. Amendment to articles of association. Approved Feb. 8, 1902. Approval fee, $5.

Grangers' Mutual Fire Insurance Company, (Limited) of St. Clair and Macomb Counties. Amendment to articles of association. Approved Jan. 31, 1902. Approval fee, $5.

Citizens' Life Insurance Company of Detroit. Amendment to articles of association. Approved Feb. 4, 1902. Approval fee, $5.

The Home Mutual Life Insurance Company of Benton Harbor. Amendment to articles of association. Approved Feb. 25, 1902. Approval fee, $5.

Patrons' Mutual Fire Insurance Company of Lenawee County. Amendment to articles of association. Approved March 10, 1902. Approval fee, $5.

Patrons' Mutual Fire Insurance Company of Michigan, (Limited). Articles of association. Approved March 22, 1902. Approval fee, $5.

North American Accident Association of Saginaw. Articles of association. Approved April 17, 1902. Approval fee, $5.

Farmers' Mutual Fire Insurance Company of Reed City. Articles of association. Approved April 19, 1902. Approval fee, $5.

American Mutual Aid Society of Detroit. Amendment to articles of association. Approved April 19, 1902. Approval fee, $5.

Ann Arbor Railroad and Steamship Employés Relief Association. Amendment to articles of association. Approved May 7, 1902. Approval fee, $5.

The Preferred Hospital and Accident Association of Flint. Articles of incorporation. Approved May 7, 1902. Approval fee, $5.

American Annuity Association of Detroit. Articles of association. Approved June 4, 1902. Approval fee, $5.

The Peninsular Accident Society of Bay City. Amended articles of association. Approved June 7, 1902. Approval fee, $5.

Ann Arbor Railroad Employés Relief Association. Amendment to articles of association. Approved June 14, 1902. Approval fee, $5.

SCHEDULE L.

Statement of money collected and turned over to the State Treasurer, through the efforts of the Attorney General, also including the sum received as fees for approving articles of association, etc., of insurance companies for the fiscal year ending June 30, 1902.

Received of United States Government on Michigan's Spanish War Claim (Schedule G)	$24,045 29
Received from Escheated Estates (Schedule H)	1,095 41
Received from Estates of Insane Persons (Schedule I)	9,213 87
Received as Insurance Approval Fees (Schedule K)	120 00
Received from Granite State Provident Association and David A. Taggart, Assignee, by Edward C. VanHusan, Receiver, to reimburse the State for expenses on account of said cause $2,287.03, and $1,000 as attorney fees, to be paid to Fred A. Maynard for services	3,287 03
	$37,761 60

SCHEDULE M.

Official opinions rendered during the fiscal year which are deemed to be of general interest.

INSOLVENT BUILDING AND LOAN ASSOCIATION.—Persons holding full paid stock, are not preferred creditors, the same rule applies to such stock in the hands of innocent purchasers for value; "such stock being evidence of their interest in the assets remaining after paying general creditors."

Lansing, July 1, 1901.

Hon. Fred M. Warner, Secretary of State, Capitol:

Dear Sir—I am in receipt of your communication of July 10th relative to the failure of the Citizen's Building and Loan Association of Flint, Michigan. You state that before the failure of this association, or at least before its financial embarrassment was known to the public or to your department, certain stock had become matured, and was taken up by the secretary and orders issued for the payment thereof. That these orders were drawn upon the treasurer of the association and were signed by the president and secretary of the association and made payable to the order of the payee. In this connection you submit the following questions for my consideration:

First. Are such orders, when held by the original payee or owners of the stock surrendered, preferred claims and entitled to be paid in full instead of sharing in the general distribution of the assets of the association?

Second. Where such orders were sold to the bank prior to the failure of the association, would they be preferred claims in the hands of the bank?

Third. At the time of the failure of the association its account at the bank was overdrawn $700. I would like your opinion as to whether the claim of the bank for the amount of this overdraft is a preferred claim, and should be paid in full?

In my opinion the first two questions submitted are fully covered by the rule laid down by Endlich on Building Associations, second edition, section 514, from which I quote as follows:

"The true rule upon this subject is undoubtedly that laid down by the Supreme Court of Pennsylvania: 'When a building association has failed to fulfill the object of its creation and has become hopelessly insolvent * * * * *after expenses incident to the administration of its assets are deducted, the general creditors, if any, should be first paid in full, and the residue of the fund should be distributed pro rata, among those

whose claims are based upon stock of the association, whether they have withdrawn and hold orders for the withdrawal value thereof, or not. Both classes are equally meritorious, and in marshaling the assets neither is entitled to priority over the other. The claims of each are alike based upon their relation to the association as members thereof.' (Christian's Appeal, 102 Pa. 184, 189.) It is but a logical carrying out of this principle, that, in cases of insolvency of associations in which a question of distribution can arise between holders of matured and holders of unmatured stock,—e. g., in a serial association,—no preference is to be accorded to the former but both classes are to share pro rata in what is left after satisfying outside creditors, other preferred claimants being out of the way. In short, the order prescribed by the by-laws of a building association for the payment of money out of its treasury to the different classes of holders of ordinary stock in the regular course of its business, does not apply to the distribution of its assets when insolvent; and neither would that order apply, in such cases, to the payment of different individuals in the same class of preferred stock. The basis of the distribution in such cases, is not the rule of the association expressed in its by-laws, standing alone, but the supreme rule of equality and mutuality, and the controlling inquiry is the amount paid in by the member, not the date of the issue of his stock nor that of its maturity or of any notice to withdraw." See also Post vs. Building and Loan Association, 79 Tenn. Rep. 418, 419.

In the case of Towle v. American Building and Loan Association, 75 Fed. 938, it was held that in case of the insolvency of a building and loan association, persons holding certificates of full paid stock were not preferred creditors of the association, and that the same rule would apply to such certificates in the hands of innocent purchasers for value.

I also wish to quote from the opinion in the case of Christian's Appeal, 102 Pa. St., as follows: "Orders issued to withdrawing stockholders are merely evidence of their interest in the assets remaining after paying general creditors."

The weight of authority, in my opinion, clearly establishes the rule that a preferred claim against a building and loan association in case of insolvency, must be based wholly on outside transactions, as distinguished from transactions as a stockholder of the association.

Applying this rule to your first question, I would say that, in my opinion, the orders in question would not constitute a preferred claim in favor of the holder, and the same would be true under the ruling in the case of Towle v. American Building and Loan Association, with respect to such orders in the hands of purchasers thereof.

In the case of the overdraft referred to in your third question, the bank would unquestionably stand in the position of a general creditor and would be entitled to priority in the payment thereof, as distinguished from the claims of the stockholders of said corporation, under the decisions above referred to.

Respectfully yours,

HORACE M. OREN,
Attorney General.

GAME AND FISH LAW.—Section 10, Act 217, Public Acts of 1901, construed to be unconstitutional, other section valid. The provisions of the law prior to the passage of said act relative to quail, spruce-hen, woodcock and partridge, would not be repealed by Section 24, and remains in force.

Lansing, July 19, 1901.

Hon. Grant M. Morse, State Game and Fish Warden, Portland, Michigan.

Dear Sir—Your letter of June 22 received, in which you call attention to an act of the Legislature of 1901, entitled "An act to revise and amend the laws for the protection of game and birds," being House enrolled No. 410, and especially Section 10 of said act, which relates exclusively to quail, spruce-hen, woodcock and partridge. This act, as it originally passed the House was amended in several important particulars by the Senate, and in which amendments the House refused to concur. A committee on conference was appointed in each House, to which the matters of difference between the two Houses were referred. A report was agreed upon, and as reported to the House by the House committee, was adopted by the House of Representatives, as shown by the Legislative Journal of date May 27, 1901, page 931, in which action of the House the Senate concurred, under date of May 28, 1901, as shown by the Senate Journal of that date, page 723, after adoption of the report of the Senate committee on conference. An examination of the report of these committees clearly shows that Section 10 of the bill as passed by both Houses of the Legislature, differs materially from Section 10 of the bill as enrolled and signed by the Governor and filed in the Office of the Secretary of State.

Section 10 as agreed to by both branches of the Legislature, reads as follows: "No person shall injure, kill or destroy, or attempt to injure, kill or destroy, by any means whatever, any ruffed grouse, commonly called partridge, or any colin, commonly called quail, or any spruce-hen or woodcock, save only from October 15th to November 30th, both inclusive of each year: Provided, That in the Upper Peninsula partridge may be killed from October 1st to November 30th, both inclusive in each year.

In the enrolled bill as signed by the Governor, this section reads as follows: "No person shall injure, kill or destroy, or attempt to injure, kill or destroy by any means whatever, any ruffed grouse, commonly called partridge, or any colin, commonly called quail, or any spruce hen or woodcock, save only from October 1st to November 30th, both inclusive in each year: Provided, That in the Upper Peninsula partridge may be killed from October 1st to November 30, both inclusive in each year."

There is nothing in this Section as signed by the Governor, to indicate the intent of the Legislature, when we take into consideration the fact that as enrolled and approved by the Governor, it did not correspond with Section 10 as passed by the two Houses of the Legislature. Therefore the discrepancy cannot be treated as a mistake or omission which the courts would have authority to correct or supply.

It will also be noticed that the proviso in said Section, as agreed to by both branches of the Legislature, is the same as found in Section 10 of the bill as signed by the Governor. But when we take into consideration

the general rule that a proviso is a subsidiary and dependent part of the Section to which it is appended, it is at once apparent that if the balance of the Section is unconstitutional for any reason, the proviso must fall with it.

The Constitution of this State, Article 4 of Section 14, provides, "Every bill and concurrent resolution, except of adjournment passed by the Legislature, shall be presented to the Governor before it becomes a law. If he approve, he shall sign it, but if not, he shall return it with his objections to the House in which it originated, which shall enter the objections at large upon their Journal, and reconsider it, etc."

No bill can become a law under the Constitution of this State, except in compliance with the provisions of said Section, and also Section 19 of Article 4, which provides, among other things, that no bill or joint resolution shall become a law without the concurrence of a majority of the members elected to each House, etc. It has uniformly been held in this State that an examination of the Journals of the Legislature may be had for the purpose of determining whether the methods of the constitution have been followed in the passage of laws.

Rode v. Phelps, 80 Mich. 608, and cases cited.

The Legislative Journals clearly show as above indicated, that Section 10 of said act, as passed by both Houses of the Legislature, was not presented to the Governor for his approval in accordance with the provisions of Section 14 of Article 4 of the Constitution of this State, and neither Section 10 of said act as passed by the Legislature, nor as approved by the Governor can be treated as a legal or constitutional provision.

Rode v. Phelps, supra.

American and English Ency. Law, 1st Edition, Volume 23, pages 185 and 186.

So far as I am able to find, the other Sections of said act as enrolled and signed by the Governor correspond with the provisions of the bill as agreed and passed by both branches of the Legislature.

Section 10 of said act being unconstitutional, it is important to ascertain what effect this would have upon the balance of the act.

The case of Rode v. Phelps, supra, is one in which the constitutionality of the Liquor Law of 1889, Act No. 213, was under consideration in the Supreme Court. This act as enrolled and signed by the Governor, differed materially from the act as passed by the Legislature. On page 508 the court makes use of the following language: "These radical differences between the act found upon the statute books, and the bill as it passed, preclude any idea of attempting to save any portion of the act. It was never passed by the Legislature and is null and void, leaving the act of 1887 in force."

It is a general rule if the invalid portions can be separated from the rest, and if after their excision there remains a complete intelligible and valid statute, capable of being executed and conforming to the general purpose intent of the Legislature as shown in the act, it will not be adjudged unconstitutional in toto, but sustained to the extent of its validity.

Black on Interpretation of Laws, page 96.

American and English Ency. Law, 1st Edition, Volume 23, page 186.

An examination of the opinion in the case of Rhode v. Phelps, supra, clearly shows that the act under consideration was held unconstitutional because of the fact that the discrepancies in the act as passed by the

Legislature, and as enrolled and signed by the Governor, was so great as to affect the act in its entirety, and the language quoted therefrom seems to indicate that had it been otherwise, an attempt would have been made to save that portion of the act not thus affected.

In the case of Chambe v. Wayne, Probate Judge, 100 Michigan 112, it was held by the Supreme Court of this State, that a statute unconstitutional in part may be valid as to the remaining portions.

In the case of Graham v. Muskegon County Clerk, 116 Mich. 571, it was held that if by striking from an act all that relates to an object not indicated by the title, that which is left is complete in itself and sensible, and wholly independent of what it rejected, it must be sustained as constitutional.

There are numerous authorities which hold that where a change is made after the passage of a bill by the Legislature, and before its approval by the Governor, that such change invalidates the act in those states where the enrollment is not conclusive.

Rode v. Phelps, supra.

An examination of these cases however, clearly show that the several acts under consideration were held to be unconstitutional as a whole, for the reason that the valid and invalid portions could not be separated, leaving a complete, intelligible and valid statute capable of being executed and conforming to the general purpose and intent of the Legislature as shown by the act.

Bearing upon this question, I desire to quote from Cooley's Constitutional Limitations, 6th Edition, commencing on page 209 as follows: "It will sometimes be found that an act of the Legislature, is opposed in some of its provisions, to the constitution, while others, standing by themselves, would be unobjectionable. So the forms observed in passing it may be sufficient for some of the purposes sought to be accomplished by it, but insufficient for others. In any case the portion which conflicts with the constitution, or in regard to which the necessary conditions have not been observed, must be treated as a nullity. Whether the other parts of the statute must also be adjudged void because of the association, must depend upon a consideration of the object of the law, and in what manner and to what extent the unconstitutional part affects the remainder. * * * where therefore, a part of a statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected in meaning that it cannot be presumed the Legislature would have passed the one without the other * * * * If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which is rejected, it must be sustained."

Applying this rule to the act under consideration it is at once apparent that Section 10 is independent of the several other Sections of this act, and that this Section can be wholly eliminated and still leave the act complete in itself, and capable of being executed in accordance with the apparent Legislative intent. This being true the act must be held as a valid and constitutional enactment, after eliminating Section 10.

Black on Interpretation of Laws, page 96.

Cooley's Constitutional Limitations, 6th Edition, pages 209, 210, 211.

Berry v. Baltimore, etc., 41 Md. 446.
20 Amer. Rep. 69.
State v. Platt, 2 S. C. 150.
16 Amer. Rep. 647.
State v. Deal, 24 Fla. 293.
12 Amer. State Rep. 204. See also dissenting opinion of Chief Justice, page 217.

Section 10 of the act in question being eliminated it is next important to determine what, if any, provision of law exists relative to the hunting, injuring or killing, etc., of quail, spruce-hen, woodcock and partridge.

Section 24 of the act in question repeals No. 105 of the Public Acts of 1893; Act No. 83 of the Public Acts of 1897; Act No. 112 of the Public Acts of 1897; Act No. 159 of the Public Acts of 1897; Act No. 91 of the Public Acts of 1899; Act No. 238 of the Public Acts of 1899, and all other acts and parts of acts in conflict or inconsistent with the provisions of said act.

An examination of this act as a whole clearly shows that it was not the intent of the Legislature to repeal all prior laws existing relative to the matters covered by said act, except as incident to the enactment of new provisions to take their places, and that the Legislature would not have wholly repealed the several acts mentioned in Section 24, without enacting new provisions covering the same subject-matter. This is especially apparent when we examine the title to said act, which gives no intimation of an intent to repeal prior laws, and therefore Section 24 in effect simply amounts to a repeal of prior laws in so far as they are inconsistent with the new act, in so far as said act is a valid and constitutional enactment. This is clearly the law in this State as applied by the Supreme Court in numerous instances.

Spry Lumber Co. v. Loan and Trust Co., 77 Mich. 199.
Rode v. Phelps, 80 Mich. 608.
Campau v. City of Detroit, 14 Mich. 285.

If the rule laid down by the Supreme Court in these cases is correct, to the effect that where an act is unconstitutional for any reason, the repealing clause falls with it, and the prior law relating to the subject-matter of the act remains in force, I can see no reason why the same rule would not apply where a separate and distinct section of the act was held to be unconstitutional and the balance of the act good.

In other words Section 10 of the act under consideration being unconstitutional, Section 24 which contains the repealing clause, also falls in so far as it attempts to repeal the prior law relating to quail, spruce-hen, woodcock and partridge. On this question the cases of Berry v. Baltimore, etc., and State v. Platt are in point.

Therefore, in conclusion I would say that Section 10 of said act is unconstitutional beyond question. The balance of the act being independent of Section 10 is complete in itself and capable of being executed in accordance with the intent of the Legislature, and is therefore valid. The provisions of law in force prior to the passage of said act relative to quail, spruce-hen, woodcock and partridge, would not be repealed by Section 24, and would remain in force.

Respectfully yours,

HORACE M. OREN,
Attorney General.

JURISDICTION OF JUSTICE OF THE PEACE; FINES AND PENALTIES. Playing baseball on Sunday. A person violating the provisions of Section 5912 of the Compiled Laws of 1897, can be arrested and if convicted fined; fines and penalties distinguished.

Lansing, July 31, 1901.

Mr. John F. O'Keefe, Prosecuting Attorney, Saginaw Michigan.

Dear Sir—I have before me yours of the 29th inst. to Mr. Chase referring to his letter to Mr. W. H. Allman, of Merrill, Mich., which inferentially holds that a person violating the provisions of Section 5912, C. L. 1897, by playing baseball on Sunday, could be arrested, and, if found guilty, convicted and fined under the provisions of that section. You state that your local judges have held that a person cannot be arrested for violating the provisions of said Section, but that the only available remedy is to sue for the penalty under the provision of Section 9797, C. L. 1897.

For answer thereto I would say that after an examination of the question presented, I concur in the conclusion reached by Mr. Chase. In Section 5912 a fine is imposed for the violation of its provisions, while Section 9797 refers to and provides that where a penalty or forfeiture is imposed and the wrongful act does not amount to a misdemeanor, the penalty or forfeiture may be recovered in a civil action. Although the terms "fines," "penalties" and "forfeitures" are often used indiscriminately and synonymously, I do not think that they were so used here. And if that is the case, the provision of Section 9797 would not apply to and govern the collection of the fines imposed by Section 5912. One of the principal differences between a fine and a penalty or forfeiture is in the nature of the proceeding in which the same is collected or enforced. In the language used in the American and English Encyclopedia of Law, (2d Ed., Vol. 13, p. 64), "A fine is usually imposed by a court of law as a termination of and judgment in a criminal prosecution. * * * A penalty is usually recovered in a civil action, the form of which is in some instances designated by general law or by the particular penal statutes.

An examination of Chapter 271 of the Compiled Laws, referring to the "collection of penalties, fines and forfeited recognizances," of which Section 9797 is a part, indicates more clearly the difference between a fine and a penalty, and that it was not intended that the fine should necessarily be collected in a civil suit. Sections 1 to 17 of that chapter refer to penalties and forfeitures and provide for their collection by appropriate civil actions; while Sections 23 and following of that chapter refer to and provide a method for the recovery of fines imposed in criminal proceedings.

An examination of the jurisdiction of justices of the peace indicates that it was intended to include within their criminal jurisdiction cognizance of all prosecutions for "offenses punishable by fine not exceeding one hundred dollars, or punishable by imprisonment in the county jail not exceeding three months, or punishable by both such fine and imprisonment." (Section 1019, C. L. 1897.)

Respectfully yours,

HORACE M. OREN,
Attorney General.

BUILDING AND LOAN ASSOCIATION.—Has the right to borrow money to carry out the purpose of the organization, in the absence of statutory prohibition, or a by-law of the association prohibiting it. Has implied power to secure the payment of a loan, by assignment of mortgages, bonds, etc.

Lansing, July 31, 1901.

Hon. Fred M. Warner, Secretary of State, Capitol.

Dear Sir—I am in receipt of your communication of July 24th, in which you submit for my consideration the following:

"No statute or grant of power is given building and loan associations in this State to borrow money; neither is there any statutory prohibition. Will you therefore advise me whether such associations have the implied power to borrow money, and if so, have such associations, in the absence of express prohibition, implied power to assign their mortgages as security for the repayment of moneys borrowed? If it shall be conceded that associations have, by implication of law, power to borrow, is it essential to the exercise of such power that a rule authorizing it be incorporated in the by-laws?"

In answer thereto I would say that while the authorities bearing upon these questions are not uniform, the clear weight of authority in this country sustains the right of a building and loan association to borrow money to carry out the purpose of the organization, in the absence of any statutory prohibition to the contrary, or a by-law of the association prohibiting it.

Thornton and Blackledge on Building and Loan Associations, Chapter 18. Endlich on Building and Loan Associations, Sections 297, 298, 299 and 300.

One of the leading cases bearing on these questions is that of North Hudson Mutual Building and Loan Association v. First National Bank, 97 Wisconsin, 31. Also reported in 11 L. R. A. 845. See also briefs and note, 11 L. R. A. 845.

I desire to quote from the opinion of the Court in this case as follows:

"It is further urged that, if it be admitted that the corporation, by its board of directors, had the power to make the loan in question, still there was no power to assign the bonds and mortages of the corporation to secure its payment, and that the assignment and pledge of them was void. We think the power to borrow implies, in the absence of any law expressly restraining the board, the power to secure the payment of the loan by an assignment of the mortgages and bonds of the other members held and owned by the corporation and to make an assignment of them for that purpose. It is said it is unjust to assign the bonds and mortgages given by members of the subsequent series to secure the payment of the money due to the stockholders of the first series. There could be no injustice in so doing if the money was in fact due to the first series. The payment could be enforced by them in equity from the moneys to become due on such bonds and mortgages, in the absence of any other resources of the company, and we know of no other resources which the company would be likely to have. The pledge of these mortgages and bonds to the bank can work no injury to the men who gave them. Any

payment made on them for the benefit of the bank will inure to their benefit the same as though it had been paid to the corporation."

You will readily see that the questions submitted are fully covered by the opinion in this case. These powers, viz.: The right to borrow money and to pledge securities for the repayment of the same, are incidental to the objects for which such corporation is created, and it is not absolutely essential to the exercise of such powers that the by-laws or statutes expressly authorize it.

Yours respectfully,
HORACE M. OREN,
Attorney General.

INHERITANCE TAX.—Tombstone or monument ordered by the court or provided for in the will of a decedent, a proper deduction from the taxable value of the estate under Act 188, Public Acts of 1899. Allowances for the support of the widow, during the settlement of the estate, are not proper deductions, but are taxable.

Lansing, July 31, 1901.

Hon. James E. White, Judge of Probate, Kalamazoo, Michigan.

Dear Sir—In compliance with your request by telephone for my opinion upon the question as to whether a tombstone or monument ordered by the court or provided for in the will of a decedent, and allowances for the support of the widow during the settlement of an estate of a decedent, are proper deductions from the taxable value of the estate under Act 188 of the Public Acts of 1899, I would say that I have reached the conclusion that expenditures for a tombstone or monument made in the manner stated, are proper deductions from the taxable value of the estate of a decedent and are not taxable;but that allowances for the support of the widow during the settlement of the estate are not proper deductions, but are taxable—my conclusions being based upon the following considerations: Under a proper construction of the act in question, debts, funeral expenses, expenses of administration and commissions of administrators are proper deductions from the clear market value (which is the taxable value), of the estate of a decedent passing to heirs or devisees by will or the intestate laws of the State. (Matter of Westurn, 152 N. Y. 102; Matter of Gould, 46 N. Y. S. 506; In re Line's Estate, 155 Pa. St. 379.) The theory being that the transfer vests no beneficial interest therein in the heirs, legatees or devisees, and that the beneficial interest in the estate of a decedent vesting by the transfer is subject to reduction and depreciation to the extent of these items of disbursement.

The expenses of an appropriate tombstone has been held to be part of the funeral expenses. That being the case, it should, with the other funeral expenses, be deducted from the taxable value of the estate. (In re Edgerton's Estate, 54 N. Y. S. 700, 704; Pistorius Appeal, 53 Mich. 350.) In re Vinot's Estate (7 N. Y. S. 517), it was held that a bequest for the maintenance of a burial plot of decedent was exempt from the

tax, "as a personal expenditure for the benefit of the decedent and as a part of the funeral expenses."

By statute in this State the allowance for the support of the widow is decreed to be of the nature of a preferred claim against the estate, which is said to take precedence of funeral expenses and debts; and in the case of Miller v. Steeper (32 Mich. 202), it was said that these allowances "belong to the matter of administration of the estate, * * * they are distinct from distribution and are inseparably connected with the course of settlement of the estate, * * * and in some measure are deemed suitable means to enable administration to be carried to that stage at which distribution may be made." The fact that these allowances are by statute and decision placed, in a qualified sense, within the category of expenses of administration, does not entitle them to exemption from taxation under the law for the taxation of inheritances. The expenses of administration which are entitled to exemption are those where the heir or devisee does not take a beneficial interest in the amount expended, other than so far as the settlement of the estate is thereby advanced; and the allowances for the support of the widow cannot claim exemption on this ground, for the reason that the widow does take a direct beneficial interest therein. It is the intent of the act to tax the transfer of all property in which a person takes a beneficial interest, subject only to the exemptions which are expressly named in the statute or those which result by necessary implication. The statute has limited the exemption of the transfer to the widow to the real estate and $5,000 of the personal property; and allowances made for her support cannot increase the scope of this exemption.

Trusting that the above will sufficiently inform you upon the questions presented, I remain,

Respectfully yours,
HORACE M. OREN,
Attorney General.

STATE BOARD OF EQUALIZATION—Board has the right to adjourn its sessions.

Lansing, August 8, 1901.

Hon A. F. Freeman, Lansing, Michigan.

Dear Sir—Your favor of the 6th inst., raising the question of the authority of the State Board of Equalization to adjourn, at hand. For answer thereto I would say that the constitutional provisions referring to, and the statutes providing for, and defining, the duties of this board, are silent in this regard, and neither confers nor restricts the authority of the board in reference thereto. That being the case, the general rule that all quasi-judicial officers or bodies possess an inherent power of adjournment, unless restricted by statute, is applicable and governs. (Com. v. Brown, 28 Kan. 85. Donough v. Dewey, 82 Mich. 309). Accordingly it has been held that an executive council, (28 Kan. 85), a board of school inspectors, (82 Mich. 309), a town board (50 Kan. 25), a town meeting (8 Cow. N. Y. 228), commissioners for taking depositions

(31 Vt. 529), and a board of road viewers (17 Ohio 101), have authority to make reasonable adjournments from time to time where the statute makes no provision in regard thereto.

The history of the meetings of the board of equalization indicates that it has been understood to possess this inherent power of adjournment. An examination of the records of the meetings of that board from 1851 to the present time shows that prior to 1886 the board met regularly upon the day fixed in the statute and made no adjournments during the periods of its sittings, except from day to day. In 1886, however, the board met as required, remained in session for a number of days and until the reports of the several counties were in, and then adjourned until the early part of September, when they met pursuant to adjournment and concluded their business. In 1891 the board followed the practice inaugurated in 1886, and after a few days of session adjourned until a day fixed in the early part of September; during the period of adjournment, however, the board constituted itself an investigating committee. In 1896 the board met as required by statute, and after receiving the reports from the several counties, and on the 21st day of August, adjourned until September 14th, at which time it met pursuant to adjournment and concluded its business. Other minor adjournments are also shown by the records, where the board adjourned for a number of days for the purpose of enabling the stenographer to write up his notes.

If there were any question of the authority of this board to adjourn, the settled practice existing unbrokenly from 1886 would have great influence in aiding in the determination of whether that right existed. I am inclined to think, however, that the right so clearly exists that it is unnecessary to go into questions of practical construction to settle it.

Respectfully,

HORACE M. OREN,
Attorney General.

FISH NETS.—Presumed that in fixing the standard, and establishing the maximum sizes of mesh that may be lawfully used, the Legislature considered that measurement should be made as the nets come from the manufacturer.

Lansing, August 10, 1901.

Hon. Grant M. Morse, State Game and Fish Warden, Portland, Michigan.

Dear Sir—In a letter from you dated July 15th, ult., you ask the opinion of the Attorney General as to the construction to be given to the various provisions in Act 151, P. A. 1897 as amended, establishing the maximum sizes of mesh that may be used by fishermen in this State in the various species of nets enumerated in the act.

You state in your letter that it is a generally known and well recognized fact that fish nets shrink in use, and that a net, the meshes of which when it comes from the manufactory will measure say by way of illustration, five inches when extended, will when tarred, used, dried and subjected to the ordinary usages of fishing, shrink so that its mesh

measurement may fall short of that of five inches by a quarter or half inch perhaps, or more, dependent upon the size of the thread and finish of the twine and the length of time it may have been used. It seems to be established that the shrinkage is not uniform and its amount depends upon various conditions, chief of which I have enumerated.

You ask whether the maximum size established by the Legislature refers to the measurement of the nets as manufactured and before use, or measurement while in use.

It is to be readily seen that the time the law fixes for measurement is of vital consequence, both to your department and the commercial fishermen. If the maximum extension relates to nets as they come from the manufactory and before use; it means that shrinkage by use will not make the nets contraband; if it relates to the nets in use, then fishermen would have to buy a larger sized mesh than the size prescribed by law so that the natural shrinkage inevitable from use would not bring them below the permissible size.

This question must be decided solely by the legislative intent, and after a careful examination of the various acts of the Legislature that have been passed in this State upon the size of mesh permissible, it seems to me that the intent is so clear that the answer to your question can admit of no doubt.

Previous legislation would indicate that the various Legislatures have well known the fact regarding the shrinkage of fish nets in use, and they have refused to set a standard on any other basis than the size of the mesh as manufactured and before use.

It is true perhaps that this does not so clearly appear in the first act in this State regulating the size of meshes (Act No. 350, P. A. 1865), as in the other subsequent acts, but in Act No. 61, P. A. 1885, Amending Section 1 of Act No. 350, P. A. 1865, providing the maximum mesh for pound nets occurs the following:

"The meshes of the parts of pound or trap nets, commonly called the lead, the funnel, and the heart, shall not be less than five inches in extension *as manufactured;* and the meshes of the parts of said nets, commonly called the pot crib, or pocket (being that part in which the fish are finally captured), shall not be less than three and one-half inches in extension *as manufactured.*"

Again in the same section as indicating the practical construction that had been placed upon the law of 1865 by fishermen who had purchased nets under that law, appears the following:

"Provided, That during the years 1885 and 1886, all pound and trap nets purchased and owned prior to July 1, 1885, may be used if the meshes of the crib or pocket, as above described, are not less than three and one-half inches in extension *as manufactured.*"

In Act 139, P. A. 1889 which superseded the law of 1865 and its amendments, the legislative intent is made more evident. After enumerating the various maximum size of mesh without stating whether as manufactured or as used, in section two occurs the language:

"The measurement of mesh referred to in this act shall be construed to refer to the size *as manufactured.*"

Language could hardly be more unmistakable in evidencing its intent than that just quoted.

In 1897 the Legislative files will show that House Bill No. 658 introduced by Representative George B. Davis, with substitute recommended

by Committee on Fisheries and Game, was recommended by the committee, and first passed the House with provisions as follows:

"The mesh of every pound or trap net used in the waters of this State shall be at least four inches extension measure *as used.*" In other instances prescribing the measure, the words "as used" are to be found.

In the act as passed by both houses these words "as used" had been stricken out and the words "manufactured" inserted.

This bit of Legislative History shows that the Legislature acted advisedly and with the full knowledge of the points involved.

It may have been urged that with the variation in shrinkage, nets that one year would be lawful would the next year be unlawful, and it is hardly to be presumed that the Legislature intended that fishermen should have anything else than the use of their property for the full period of its usefulness, at least not without expressing such in no uncertain terms. It might have been urged that the one certain and uniform measurement was that which could be made before use, and as the nets came from the manufactories. Fishermen could then protect themselves by purchasing a lawful size, and not have their property put in jeopardy by having a standard applied when by shrinkage from use the nets might or might not fall below the standard.

It is to be presumed that in fixing the standard, and in providing that the measure for determining whether the requirements of the law had been met, should be made as the nets come from the manufactories, the legislature fairly considered the needs of fish protection and the interest of the commercial fishermen of the State.

In my judgment to give this act any other construction than I have outlined would be to do violence to the clear and manifest intent of the Legislature.

Very respectfully,
HORACE M. OREN,
Attorney General.

EXPERIMENT STATION BULLETINS.—Should be printed and bound under the State contract, the expense therefor to be paid from the fund provided for the support of the Agricultural College.

Lansing, August 16, 1901.

Hon. A. C. Bird, Secretary State Board of Agriculture, Lansing, Michigan.

Dear Sir—Your letter of August 7th received and considered. You state that by recent act of the Legislature, the Agricultural College is required to pay for the printing of the Experiment Station Bulletins from the fund of $100,000 provided for in said act for the support of the institution, and you ask whether under this condition of affairs those bulletins must be printed and bound under the State contract, or can the State Board of Agriculture have the work done by the lowest satisfactory bidder.

Replying thereto will say that Section 15 of Act No. 44 of the Public Acts of 1899, being "An act to provide for the publication and distribution of laws and documents, reports of the several officers, boards

of officers and public institutions of this State, now or hereafter to be published, etc.," provides as follows:

"The State Board of Agriculture shall prepare and print bulletins of the experiment station as at present provided by law, which expense shall be audited by the Board of State Auditors, but in no year shall the expense for printing and binding of any bulletins by the State Board of Agriculture exceed the sum of $1,000, etc."

Later in the session of the Legislature of 1899 a concurrent resolution was passed increasing the allowance for such printing and binding to the sum of $4,000.

By Act No. 232 of the Public Acts of 1901, being "An act to extend aid to the Agricultural College," it was provided that the expense of printing and binding the bulletins of the experiment stations should be paid from the fund created by said act for the support of the Agricultural College, instead of from the general fund of the State, as provided in previous laws.

Section 31 of Act No. 44 of 1899, above referred to, provides in part as follows:

"And it shall be the duty of the State printer or binder to deliver at the office of the Secretary of State, or at such other place or places as he may direct, all the books or pamphlets to be printed and bound, as mentioned in this act."

In my opinion this section, considered in connection with that provision of Section 22 of Article 4 of the constitution of this State, requiring that all printing and binding ordered by the Legislature, shall be let by contract to the lowest bidder or bidders, contemplates that all printing and binding for which provision is made in said act, should be done by the State printers or binders under their contract with the State.

It therefore follows that the Experiment Station Bulletins, should be printed and bound under the State contract, the expense thereof to be paid from the fund provided for the support of the Agricultural College.

Yours respectfully,

HORACE M. OREN,
Attorney General.

INHERITANCE TAX LAW.—The tax not being paid within six months from the accruing thereof, the statute does not authorize a discount of five per cent from the amount of such tax.

Lansing, August 16, 1901.

H. H. Barlow, Attorney-at-Law, Coldwater, Michigan.

Dear Sir—I am in receipt of your letter of August 9th, relative to the payment of the inheritance tax in the estate of Frances J. Fiske Parkhurst, deceased. You state that Mrs. Parkhurst died on January 5, 1900; that on June 19, 1901, the Probate Court made an order settling the estate and fixing the amount of the inheritance tax to be paid to the State; that from the amount of such tax, so determined, viz., $3,818.29, five per cent was deducted under Section 4 of the inheritance tax law,

which provides that if such tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. You also state that the Auditor General has refused to countersign the receipts issued by the county treasurer unless the five per cent so deducted under the order of the court is included in the amount to be received by the State.

After a careful consideration of this matter, I am of the opinion that the Auditor General was correct in his contention. Section 3 of the inheritance tax law provides that all taxes imposed by said act shall be due and payable at the time of the transfer. Under the ruling in the case of Richards v. Pierce, 44 Mich. 444, it was held by the Supreme Court that the transfer of property by will takes place at the death of testator. While it is true that under our statute a will must be probated before it is sufficient to pass property, yet the above case holds that when so proved the will relates back to the date of testator's death, and the time of transfer is on that date. In the case of Foote v. Foote, 61 Mich. 181, it was held by the Supreme Court of this State, that if a man dies intestate, the equitable title to his property under the laws of this State, at once passes to his heirs.

The inheritance tax law of this State is a copy of the inheritance tax law of the State of New York. In the case of matter of Seaman, 147 New York Reports, 69; in passing upon the inheritance tax law of that state, the court held that the time of transfer in the case of decedents, refers to the time death occurs, and not to the date of the order of distribution made by the Probate Court.

This ruling is clearly in accord with the rule in this State as laid down in the cases above cited.

I would therefore say that in the estate referred to, the tax not being paid within six months from the accruing thereof, viz., January 5, 1900, the statute does not authorize a discount of five per cent.

Respectfully yours,

HORACE M. OREN,
Attorney General.

LABOR BUREAU.—BOARD OF STATE AUDITORS.—Printing and publishing laws, relative to Labor Bureau, Board of State Auditors, to audit bills for the expense of.

Lansing, August 28, 1901

Board of State Auditors, Lansing, Michigan.

Gentlemen—Under date of January 22, 1900, I gave an opinion to your honorable board to the effect that certain bills for printing and binding compilations of laws relative to the Labor Bureau could not be lawfully audited by you and paid out of the general fund of the State, by reason of certain provisions of Act No. 44, Public Acts of 1899.

The Legislature of 1901, in the passage of Act No. 113, approved May 13, 1901 and given immediate effect, has in my opinion, changed the law in this regard. Section 15 of said act provides in part as follows:

"And provided further, that in addition to the above amount allowed for expenses, there may be printed not to exceed one thousand copies of such reports for the use of the Labor Bureau for general distribution, and all printing, binding, blanks, stationery, supplies or map work shall be done under any contract which the State now has or shall have for similar work, with any party or parties, and the expense thereof shall be audited and paid for in the same manner as other State printing.

This being the later enactment, it would unquestionably supersede the provisions of Act No. 44, Public Acts of 1899, to which your attention was called in said opinion of January 22, 1900, in so far as said provisions were applicable to the printing, etc., for the Labor Bureau, and bills for such expense incurred since said Act No. 113 took effect, should be audited and paid under and pursuant to the provisions of Section 15 of said act.

Yours respectfully,
HORACE M. OREN,
Attorney General.

GOOD TIME.—First term convict entitled to. Prisons of the State so far as relate to good time allowance, treated as in effect one institution.

Lansing, August 28, 1901.

Hon. Amos Musselman, Grand Rapids, Michigan.

Dear Sir—Yours of the 22nd, enclosing paper read by T. C. Quinn, Esq., before the joint prison boards at Sault Ste. Marie, August 7, 1901, was duly received, and I have carefully examined Mr. Quinn's paper. I am not able to agree with the conclusions that he has reached. These conclusions might be correct if his premise was right. He bases his argument upon the assertion that, as respects the provisions for good time and first, second and subsequent terms, the three prisons are to be treated as independent institutions.

In an opinion given by Attorney General Maynard to O. M. Barnes, Chairman of the Board of Control of the Michigan State Prison at Jackson, on July 18, 1896, Mr. Maynard advises Mr. Barnes that in effect these three prisons referred to in the consolidated act so far as relates to first and second terms and good time allowances, are to be treated as the prison of the State of Michigan.

In the case of Frank Armstrong which came before the Supreme Court on his application for a writ of habeas corpus in April, of 1898, the Supreme Court refused to grant the writ. The facts in the Armstrong case were as follows: Armstrong had been sentenced to a term in the House of Correction and Reformatory at Ionia. Some time after the expiration of his sentence in that institution he was convicted and sentenced to the State Prison at Jackson. His application for a writ of habeas corpus was based upon the allegation that he was entitled to good time as a first term convict under the law, and that the fact of his former sentence to the State House of Correction and Reformatory would not result in making him a second term convict in the State Prison at Jackson.

The matter was heard by the Supreme Court upon briefs filed in behalf of Armstrong, and also by the Attorney General, and the briefs filed in behalf of Armstrong adopted the same line of reasoning as the paper of Mr. Quinn. The Attorney General on the other hand, urged that the prisons, so far as related to good time allowance, were to be treated as in effect one institution. After a full hearing the writ was denied and Armstrong was remanded to prison. No written opinion was filed in this case and it is no doubt due to that fact that Mr. Quinn failed to refer to this ruling of the Supreme Court, which is authority against his position.

With this positive ruling of the court, I feel that the question raised by Mr. Quinn has been settled and does not admit of further argument.

Very respectfully,

HORACE M. OREN,
Attorney General.

STATE BOARD OF EQUALIZATION.—It is the duty of said board to equalize the assessments, that are submitted to its consideration and review, so that the result will express as near as possible the actual cash value of the taxable properties of each county in the State.

Lansing, September 4, 1901.

Hon. Jason E. Hammond, Secretary State Board of Equalization, Lansing, Michigan.

Dear Sir—I am in receipt of your letter of the 26th inst., written at the direction of the State Board of Equalization, and asking my opinion on certain questions hereinafter referred to; and in reply I beg leave to submit the following:

The duty of the State Board of Equalization, as expressed in Section 132, C. L. 1897, is, after having determined whether the assessments of taxable property in the various counties of the State are relatively unequal in their valuations, to add to or deduct from these aggregate valuations such percentage as will produce relative equal and uniform valuations between the several counties.

A compliance with this duty necessarily implies the use of a standard of valuation, a uniform measure by which each assessment is to be gauged and judged. Without such a standard, in terms of which each aggregate assessment can be expressed, relative equality would be impossible of attainment. Our Constitution has provided this standard in Section 12 of Article XIV as follows: "All assessments hereafter authorized shall be on property at its cash value."

The basis of a lawful assessment is the cash value of the property assessed, and if above or below this standard the measure of variation is the measure of the duty of the State Board of Equalization in reducing the several aggregate assessments to a uniform basis.

It is suggested, however, that equality and uniformity may be equally attained by reducing each of the aggregate assessments, not to a basis of cash valuation, but to a basis of some certain percentage less than cash valuation. In other words, having determined the percentage of variation of each assessment from cash value, it would be possible to reduce

each assessment to a basis of fifty per cent, or one per cent, or any per cent of cash value with resultant equalized values having the same relative equality and uniformity as if each assessment had been reduced to cash value, and I understand the questions contained in your letter to be whether some mean percentage of cash value less than full cash value may lawfully be taken by your board as the basis of equalization, and by proper additions and subtractions each aggregate assessment be brought to that basis instead of to the full cash value basis.

If the sole purpose of State equalization was to obtain a basis for the apportionment of State taxes among the several counties, it might plausibly be argued that the Board of Equalization had full latitude to fix its own basis of equalization; for, with any basis whatever, if uniformly adhered to, the counties would in each case occupy the same relative position as respects the allotment of State taxes. But there is at least one other purpose for State equalization that the apportionment of the State taxes, and this purpose indicates unmistakably that the duty of the State Board of Equalization is not alone to provide a basis for the distribution of the State burdens among the counties in proportion to the taxable property held in each; but, that it is required at the same time in the same proceeding to determine the aggregate valuation of the taxable properties of the State. I would refer you to Sec. 1807, C. L. 1897 as amended where it is provided that there shall be assessed in each year upon the taxable property of the State *as fixed by the State Board of Equalization,* for the use and maintenance of the University of Michigan, the sum of one-fourth of a mill on each dollar of said taxable property.

By this section it is seen that the valuation as fixed by the State Board of Equalization is made the basis for the determination of the aggregate of an important State tax; and if, to the Board of Equalization was given the latitude of equalizing on any basis they might select less than cash value, they would have the power practically to wipe out this tax; for, granting the latitude, a valid equalization might be made by reducing the valuation of Wayne county to one dollar, Houghton to fifty cents and other counties in proportion; or, by taking 50 per cent or 75 per cent of cash value as the basis, the tax might be reduced a half or a quarter from what it would be if cash value was the basis.

But it was manifestly the intention of the Legislature that each dollar of taxable property as found by the Board of Equalization should bear its quarter of a mill tax, and that the valuation upon which this tax was based should be the valuation of the Constitution, viz., cash value. The finding of the Board of Equalization under the operation of this act becomes an assessment for the purpose of levying the University tax; and for the Board of Equalization to make this assessment at less than cash value would be a manifest violation of the Constitution.

In this act we have, therefore, a positive inhibition against equalizing in any other way than by reducing each of the several aggregate assessments to its equivalent on a cash value basis, and thus at the same time establishing the ratios between the several counties and determining the true aggregate value of the taxable property of the State.

That it is the theory and manifest intent of our equalization laws that equalization should be made by reducing or raising faulty assessments to their proper equivalent in terms of cash value is made evident in other ways. Prior to the creation of a State Board of Equalization under the

Constitution of 1850, there were county boards of equalization, consisting at first of the County Commissioners, and later, after the adoption of the supervisor systems, of the County Board of Supervisors.

Revised Statutes of 1838, pages 82 and 83.
Revised Statutes of 1846, page 106.

These boards were required to review the assessors valuation of the real estate in each township and to equalize the same by adding thereto or deducting therefrom such per centum as would in their judgment produce, relatively, an equal and uniform valuation of the real estate of the county.

The aggregate valuation of the taxable property of the county as taken from the corrected valuation of the assessment rolls was certified to the Auditor General, and the latter apportioned the State tax according to these valuations.

These boards of equalization were acting under laws that required assessments to be at cash value, and although there can be found no positive provision that equalization should be made by bringing all real estate to a cash value basis, yet unless such was the intent the apportionment of State taxes was bound to be unfair and unequal. One county might have equalized on a basis of one-tenth of, another at full cash value. It is inconceivable that all of the counties were not, by implication at least, required to conform to the uniform standard which was required for assessments.

After the establishment of the State Board of Equalization under the Constitution of 1850, it is true that it was held, as to county equalization, that the board of supervisors might adopt their own means of reaching the result, and that a taxpayer could not complain, of an equalization at less than cash value inasmuch as he would not be unjustly affected by a uniform assessment at or a uniform reduction on equalization to less than cash value.

Case vs. Dean, 16 Mich. 12.
Williams vs. Means, 61 Mich. 86.

But these cases cannot be taken as authority in instances where equalization serves other purposes than apportionment of taxes among the districts whose assessments are equalized. They cannot be accepted even as indicating the duty of equalizing officers, but merely as enunciating the proposition that unless a party is prejudiced by the unauthorized conduct of an officer he is not entitled to complain.

As indicating that it is the policy of our Constitution and laws to impose upon equalizing boards the duty of bringing assessments to a cash value standard, I would call your attention to other provisions of our laws.

In the act under which the State Board of Equalization acts they are required to take into consideration location, soil, improvements and manufactories, and also statistics of the State and any information they can gather.

By the State Tax Commission Act, the Board of Tax Commissioners which is charged with the duty of seeing that assessments are made on the basis of actual cash value, is required to furnish information and assist the State Board of Equalization. While this fact may not be accepted as indicating the proper standard for equalization, yet it is hardly to be conceived that the Legislature would have required this assistance to be

rendered except to give the Board of Equalization more accurate information as to the true standard of assessment and the deviation therefrom in the several counties in the State, and all to the end that the final judgment of the State Board of Equalization might express the more accurately the true valuation of the taxable properties of the State.

By the late constitutional amendments and the legislation based thereon, certain taxes are required to be assessed at a rate equivalent to the average rate of taxation obtaining in the State at large. It may be premature to say that the valuations fixed by the State Board of Equalization may be taken into consideration by the board of assessors in determining this average rate, and yet a finding by the board of assessors that would indicate that they had taken as their basis for computation an aggregate valuation widely divergent from that found by the State Board of Equalization, would be to invite controversy and bring about an uncertainty, which an adherence to a cash value standard in both assessment and equalization would obviate. The even balance of our whole taxation system is so intimately connected with the idea of cash valuation, that any divergence from that standard destroys the uniformity and equality which our Constitution and laws seek to preserve.

For all these reasons I would advise the Board of Equalization that it is its duty, according to its best judgment and information, so to equalize the various aggregate assessments that are submitted to its consideration and review, that the results will express as near as possible, the actual cash value of the taxable properties of each county in the State; and for it to knowingly do otherwise would, in my judgment, be a gross disregard of the duties that are imposed upon it by the Constitution and laws of this State.

Very respectfully,
HORACE M. OREN,
Attorney General.

LIQUOR LAW.—Person holding office of Representative in State Legislature, and also the office of Director in School District, is disqualified from acting as surety on liquor dealer's bond.

Lansing, September 4, 1901.

Frank A. Miller, Prosecuting Attorney, Stanton, Michigan.

Dear Sir—Your letter of the second instant received and contents noted. In answer thereto would say that in my opinion, a person holding the office of Representative in the State Legislature, and also the office of Director in a School District, would be disqualified from acting as surety upon a retail liquor dealer's bond under Section 5386 of the Compiled Laws of 1897. However, I am unable to find that this particular question has been passed upon by the Supreme Court. In this connection the case of Wolcott vs. Judge, 112 Mich., page 311, is of interest.

Respectfully yours,
HORACE M. OREN,
Attorney General.

BOARD OF STATE AUDITORS—Has no authority to audit bill of Genesee County for maintaining at its poor farm, certain insane patients.

Lansing, September 4, 1901.

Honorable Board of State Auditors, Capitol, Lansing, Michigan.

Gentlemen—I am in receipt of your communication of August 29th, in which you request my opinion as to your authority in auditing bill for $883.42 incurred by the County of Genesee in maintaining at its poor farm certain State insane patients.

In answer thereto would say that I know of no law in this State which provides for the maintenance by counties at their poor farms or poor houses, of insane patients, at the expense of the State. The only provision for the maintenance of insane patients outside of the asylums being Act No. 161 of the Public Acts of 1887, Sections 1950 to 1953 inclusive, of the Compiled Laws of 1897. The several insane patients referred to in said bill were not maintained outside of the State asylums in accordance with the provisions of said act in any particular, or in accordance with any other provision of law.

It would therefore say, that in my opinion, the expenses incurred by Genesee County in their maintenance at the poor farm of said county would not be a lawful charge against the State of Michigan.

Respectfully yours,

HORACE M. OREN,
Attorney General.

BANKING CORPORATION.—Organization and taxation of; franchise fee required; real estate of, assessed to the corporation; shares in, deemed personal property, and assessed to the owners thereof at cash value, after deducting the value of the real estate from the value of the capital stock assessed to the owner thereof.

Lansing, September 4, 1901.

Helm, Bruce & Helm, Louisville, Kentucky.

Gentlemen—I am in receipt of your communication of August 15th, in which you ask for an outline of our methods for taxing banks in this State, and submitting certain questions as follows:

1. Does your State impose a franchise fee upon your banks. If so, what method is resorted to for ascertaining the value of the franchise?
2. Is there a tax imposed upon the banks for both State and local purposes?
3. If there is a tax imposed on the stock of the bank, has the word "stock" been interpreted to mean "shares" of stock, or if not, what interpretation has been placed upon the word "stock"?
4. If the word "stock" has been interpreted to mean "shares," then how are they valued, by their market value or their book value?

5. Does your State tax the deposits against the bank?

In answer thereto I would say that banks are taxed under the general tax law of this State, a copy of which, together with a copy of the general banking law, I mail you under separate cover.

In answer to your first question, would say that when a bank is organized under the general banking law of this State, it is required to pay a franchise fee to the Secretary of State of one-half of one mill on each dollar of its authorized capital stock, upon filing its articles of incorporation in that office. No other franchise fee or tax is required to be paid under the laws of this State by a bank unless its capital stock is increased.

Under the general tax law the real property of the bank is assessed to the bank and the shares are assessed to the owners thereof at their actual cash value, after deducting the value of the real estate from the value of the capital stock, and such real estate or shares of stock are assessed for both State and local purposes, which fully covers your second question.

In answer to your third question, would say that the general tax law expressly provides, with respect to banks, that the shares shall be deemed personal property and assessed as such, and the term "stock" is not used in connection therewith.

The Constitution and general tax law of this State provide that all property subject to taxation, except properties paying specific taxes, shall be assessed at its true cash value.

In answer to your fifth question, would state that deposits in banks in this State are assessed to the owner thereof, and not to the bank.

Respectfully yours,

HORACE M. OREN,
Attorney General.

STATE BOARD OF EQUALIZATION.—Has power to raise or lower, total assessed value of State, as determined by local assessors, it being the duty of the board to equalize on the basis of the actual cash value, to be ascertained from such information as the statute gives them the right to resort to, etc.

Lansing, September 16, 1901.

Hon. Perry F. Powers, Auditor General, Capitol.

Dear Sir—Replying to your letter of August 22d, in which you state on behalf of the State Board of Equalization, that it was contended by certain advocates before the Board at its last session that the Board had no power to raise the total assessed value of the State as determined by the local assessors, but must accept the total thus found and distribute it as equally as in the judgment of the Board it should be distributed, to the various counties of the State, and upon which contention my opinion is solicited. I have the honor to state as follows:

In my previous opinion given to the Board I have stated that it was the duty of the Board to equalize on the basis of actual cash value as ascertained by the Board from such information as the statute gives them the right to resort to, viz.: Location, soil, improvements, production, manufactories, statistics of the State, information furnished by the State

Tax Commission, and from any other source. All assessments shall be equalized by adding or deducting from each such amount as will reduce them to a cash value basis. The aggregate total of the equalization may exceed or be less than the aggregate assessed valuation. If there was any basis for the claim that the aggregate equalized value could not be made to exceed the aggregate assessed valuation, there has been only one valid State equalization in the history of this State, viz.: that of 1856, for in every equalization since, the aggregate has quite largely exceeded the aggregate assessment. I can see no possible basis for the contention referred to in your communication, and would advise the Board that it should be disregarded.

Very respectfully,
HORACE M. OREN,
Attorney General.

PARTNERSHIP ASSOCIATION—Formed under Chapter 160 of the Compiled Laws of 1897, may conduct a commercial banking business, being subject to the provisions of Chapter 133 of the Compiled Laws of 1897.

Lansing, September 25, 1901.

Edward N. Breitung, Marquette, Michigan.

Dear Sir—Your letter of the 17th instant received and contents noted. Replying thereto would say that I know of no legal objection to a partnership association formed under and pursuant to Chapter 160 of the Compiled Laws of 1897, conducting a commercial banking business. Such business, however, would have to be conducted pursuant to the provisions of Chapter 133 of the Compiled Laws of 1897.

Respectfully yours,
HORACE M. OREN,
Attorney General.

CONVICT.—GOOD TIME.—Person having served a term in the Ionia Reformatory, and afterward committed to prison again in this State, is a second term man and only entitled to good time as such.

Lansing, September 25, 1901.

Hon. Amos Musselman, Chairman Joint Prison Board, Grand Rapids, Michigan.

Dear Sir—Yours of the 4th, enclosing Mr. Quinn's letter of date August 30th, received. In reply will say that the department of the Attorney General has advised the wardens of the different prisons in this State, that where a justice of the peace has sentenced a man to the Ionia Reformatory and he served out his time, and afterward was committed to prison again in this State, that he would be a second term man and only entitled to good time as a convict serving a second term. Under

the wording of the law the test seems to be whether or not he served a term in a prison in this State, and if the records of the prison show that he has served a term in a prison in this State, he is a second termer within the intent and meaning of the law. A warden of the prison should be guided by the prison records and would not be justified in going behind the records and passing upon the regularity or legality of a sentence and commitment, after the convict has served out the time.

Yours respectfully,

HORACE M. OREN,
Attorney General.

TAX LAW—Funds in the hands of Trustees of Methodist Episcopal Church, for the purpose of being invested as a permanent fund, the interest upon which only is to be used for the support of worn out ministers, their widows and orphans, are subject to taxation.

Lansing, September 25, 1901.

M. M. Callen, Eaton Rapids, Michigan.

Dear Sir—Your communication of September 10th to the chairman of the Board of State Tax Commissioners has been referred to this department, in which you submit the following questions:

First. Are the funds in the hands of the trustees of the Michigan Annual Conference of the Methodist Episcopal Church, incorporated under the laws of the State of Michigan, to be invested as a permanent fund the interest of which only is to be used for the support of worn out ministers, their widows and orphans, assessable for taxes under the laws of the State?

Second. A farm has recently been given to us, to be sold and the proceeds to go into the aforesaid fund and invested in the manner as above. Is this while in our hands assessable for taxes?

Third. If money or other property should come into our hands to be used as above, upon which we pay an annuity to certain parties as agreed upon, during their natural life, would such fund be assessable while the annuity was in force?

As I understand it, the Michigan Annual Conference of the Methodist Episcopal Church is incorporated under Act No. 30, Public Acts of 1875, entitled, "An act to provide for the exercise by religious societies of corporate powers for certain purposes." This act in no way exempts from taxation any of the property which such corporation is authorized to hold or possess, and it therefore follows that we must look to the general tax law of the State for a solution of the questions, the same being Act No. 206, Public Acts of 1893, as amended. Section 2 of this act provides: "For the purposes of taxation real estate shall include all lands within the State and all buildings and fixtures thereon, and appurtenances thereto, except such as are expressly exempted by law." The real estate exemptions are covered by Section 7, this action providing in part as follows: "The following real property shall be exempt from taxation. * * * 4. Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions, incorpo-

rated under the laws of this State, and the buildings and other property thereon, *while occupied by them solely for the purposes for which they were incorporated*, etc. 5. All houses of public worship with the land on which they stand, the furniture therein and all rights in the pews, and also any parsonage owned by any religious society of this State and occupied as such." Section 8 designates what personal property shall include for the purposes of taxation, and the personal property exemptions are found in Section 9 of said act, which in part provides as follows "The following personal property shall be exempt from taxation, to-wit: First, the personal property of benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State, etc."

A benevolent, charitable, educational or scientific institution, in order to acquire the benefits of the exemptions provided for with respect to such institutions in the general tax law as above quoted, must be organized chiefly, if not solely, for one or more of these objects. Attorney General vs. Common Council, 113 Mich., 388. Therefore in answer to your first question I would say that in my opinion the Michigan Annual Conference of the Methodist Episcopal Church was not organized solely or chiefly for the purpose of holding in trust funds, the interest of which is to be used for the support of worn out ministers, their widows and orphans, and such funds, would, in my judgment, be subject to taxation until such time as the Legislature in its judgment may see fit to provide a different rule with respect to such property.

In answer to your second question would say that the real estate in question is not occupied solely for the purposes of a library, benevolent, charitable, educational or scientific institution, incorporated under the laws of this State; neither is it exempt under the provisions of subdivision 5 of section 7 of the general tax law, or any other provision of said act. It would therefore be subject to taxation.

With respect to your third question would say that this question is fully covered by my answer to your first. In other words, none of the property mentioned in your three questions would be exempt from taxation under the laws of this State.

Respectfully yours,
HORACE M. OREN,
Attorney General.

HOLIDAY.—The proclamation of the President of the United States, and Governor of this State, appointing Thursday, Sept. 19, 1901, a day of mourning and prayer; sufficient to make said day a legal holiday within the meaning of Section 4880 of the Compiled Laws of 1897.

Lansing, September 25, 1901.

W. E. Hodgman, Coldwater, Michigan.

Dear Sir—Your letter of the 20th instant received, in which you ask if the proclamation of the President of the United States under date of September 14, 1901, or the proclamation of the Governor of this State under date of September 14, 1901, relative to the appointment of September 19, 1901 as a day of mourning and prayer, etc., could be construed

as making said 19th day of September a holiday within the meaning and intent of Section 4880 of the Compiled Laws of 1897.

This section designates certain days as legal holidays and provides in part as follows: "And any day appointed or recommended by the Governor of this State or the President of the United States as a day of fasting and prayer, or thanksgiving, shall, for all purposes whatever, as regards the presenting for payment or acceptance, and the protesting and giving notice of dishonor of bills of exchange, bank checks and promissory notes, made after this act shall take effect; also for the holding of courts, except as hereinafter provided, be treated and considered as the first day of the week, commonly called Sunday," etc.

In the case of People vs. Ackerman, 80 Mich., 588, it was held by the Supreme Court of this State that the use of the words "any day" instead of "the day" shows that the intent of the Legislature was not to limit the holidays to the general Thanksgiving Day, but to all days designated as days of "fasting and prayer, or thanksgiving."

Under the proclamation of the President of the United States above referred to, Thursday, September 19th, was appointed as "a day of mourning and prayer throughout the United States." It is my opinion that the courts would hold the President's proclamation and the proclamation of the Governor, which is couched in more general language, to be sufficient to make the 19th day of September, 1901, a legal holiday within the meaning and intent of said Section 4880.

Yours respectfully,

HORACE M. OREN,
Attorney General.

LIQUOR LAW.—Thursday, September 19, 1901, having been proclaimed a legal holiday, the keeping open of a saloon on that day is a violation of Section 5395 of the Compiled Laws of 1897.

Lansing, September 25, 1901.

Austin E. Richards, Prosecuting Attorney, Corunna Michigan.

Dear Sir—Your letter of the 20th instant received and contents noted. In answer thereto would state that in my opinion, the proclamation of the President of the United States issued under date of September 14, 1901, and also the proclamation of the Governor, issued under the same date, making the 19th day of September a day of mourning and prayer, would be sufficient to make said day a legal holiday within the meaning and intent of Section 4880 of the Compiled Laws of 1897.

It would therefore follow that the keeping open of a saloon on that day would be a violation of the provisions of Section 5395 of the Compiled Laws of 1897.

I enclose you herewith a copy of an opinion of the Attorney General this day given to W. E. Hodgman, of Coldwater Michigan, bearing upon this question.

Yours respectfully,

HORACE M. OREN,
Attorney General.

VACANCY IN OFFICE OF REGISTER OF DEEDS.—A woman having been appointed as deputy, upon the death of the principal, becomes the acting officer, during the continuance of such vacancy. The board of supervisors may or may not call a special election to fill said vacancy, as in their discretion they may decide.

Lansing, October 4, 1901.

George Luton, Esq., Prosecuting Attorney, Newaygo, Michigan.

Dear Sir—I am in receipt of your favor of the 2d inst., relative to the vacancy in the office of register of deeds in your county, in which you wish my views upon the question of whether Section 3596, Compiled Laws of 1897, is to be construed as mandatory or permissive.

Your contention, as I gather, is that the deputy appointed before Mr. Carter's death was a woman, and that she cannot hold the office of register of deeds; that her principal being dead, she has no standing as deputy; that the law abhors an absolute vacancy in a public office and that permissive statutes will be construed as mandatory to prevent such a vacancy.

You cite the case in 51 N. Y. 401, as enunciative of the principle, that where a statute provides for the doing of an act for the sake of justice, or where it clothes a public body or officer with power to do an act which concerns the public interest or the right of individuals, though the language of the statute be permissive merely, it will be construed as imperative, and the execution of the power be insisted upon as a duty.

If it were true that our law is such that an absolute vacancy has resulted with no one in the interim provided to perform the duties of the office, I would think your contention based on strong grounds.

But the section providing for the appointment of a deputy especially authorizes such deputy to perform the duties of register during the continuance of such vacancy.

The fact that the deputy is a woman does not abridge or restrict her powers in case of a vacancy. This is specifically asserted in the case of Wilson vs. Circuit Judge, 87 Mich. 495, 496.

With these considerations apparent it does not seem to me that the principles you cite are applicable. There is no absolute vacancy, and there are no public interests or rights of individuals put in jeopardy by a failure to supply the vacancy before the next general election. In other words, there are no reasons for forcing the permissive words in Section 3596 away from their natural and ordinary meaning. In my judgment the board of supervisors may, or may not, call a special election as in their discretion they may decide.

Very respectfully,
HORACE M. OREN.
Attorney General.

POLYGAMY—Where the second marriage takes place within this state, prosecution for polygamy may be instituted either in the county where the second marriage took place, or in the county where the parties therafter continue to cohabit.

Lansing, October 7, 1901.

Frank E. Chamberlain, Prosecuting Attorney, Manistee Michigan.

Dear Sir—Your letter of the 4th instant received, in which you state that, "On the 3d of July, 1900, a man by the name of Combs married one Julia Howe in this county. He procured his license in Saginaw and he and the woman he married went immediately to Reed City to live. It turns out that he already had a wife living and the woman he married last desires to prosecute him for bigamy. The marriage was consummated here in Manistee; they lived and cohabited together a week or two in Reed City," and you ask whether the prosecution should be instituted in Manistee County or Osceola County, or could either take cognizance of the crime.

Replying thereto, would say, that Section 11691 of the Compiled Laws of 1897 provides as follows: "If any person who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife, in the State, he or she shall, except in the cases mentioned in the following section, be deemed guilty of the crime of polygamy, etc." Numerous prosecutions have been instituted under this section of the statute, but seem invariably to have been based upon a second marriage, and not upon the clause relative to continuing to cohabit in the State, and in such cases convictions have uniformly been sustained. These cases hold that it is the appearing to contract a second marriage and the going through the ceremony which constitutes the crime of bigamy. See People v. Brown, 34 Mich., 339; also People v. Dawell, 25 Mich., 247; People v. Lambert, 5 Mich., 349; People v. Calder, 30 Mich., 85; People v. Mendenhall, 119 Mich., 404; People v. Turner, 116 Mich., 390.

I am unable to find any case in this State where the provision of the statute "shall continue to cohabit with such second husband or wife in the State," has been construed by the courts. However, in other states, under similar statutes, the question has been passed upon by the courts of those states. An examination of those cases shows that the statute clearly applies to prosecutions instituted under the provision relative to continued cohabitation, where the second marriage takes place outside the State. The provision referred to has also been held to apply to cases where the second marriage takes place in the State, and the continued cohabitation takes place in the same State in a different county. from that in which the second marriage takes place. See Bishop on Stat. Crimes, 3 Ed., Sec. 588 and cases cited. In Brewer v. State, 59 Ala., 101, under a statute similar to that in our State, a prosecution was instituted where the second marriage took place in Alabama, and the parties continued to cohabit in that State. The court says:

"But Section 4815 of the code, supra, declares two offenses of very different constituent elements, although of the same general character, and punishable in the same manner. One of the offenses can be prosecuted and punished only in the county in which the unlawful marriage is

solemnized. In the other, no matter where the marriage takes place, if bigamous, the offense is complete if the parties thus unlawfully married 'continue to cohabit' in the county in which the indictment is found."

In Finney v. State, 3 Head., (Tenn.) 544, the court says: "We think it clear that by this Section to continue to cohabit with such second husband or wife in this State,' is a distinct and complete offense, and as such cognizable in the county where it occurs, as the crime of bigamy is in the county where the second marriage took place. The offender could not be charged for the latter crime in any other county than that where it occurred, but, as to the former, it may be in a different county, and must be located by the facts as well as the other. They are two distinct offenses. To make out the case for unlawful cohabitation, the offense of bigamy must be proved by establishing both the marriages, and that at the time of the second, the former had not been dissolved by divorce, or death either actual or presumed. This new offense was created to prevent the scandal and evil example of permitting men and women to cohabit in any community of this State, upon an unlawful second marriage, when the first as well as the last, or either, may have taken place in any other state or county."

In State v. Sloan, 55 Iowa, 217, it was said: "The defendant insists that the provision in respect to continued cohabitation in this State was designed to apply only to a case where the marriage took place elsewhere. * * * The design of the statute doubtless was, as the defendant contends, to make continued cohabitation in this State, under a bigamous marriage contracted elsewhere, bigamy in this State. But we think the statute means more than that. Cohabitation under a bigamous marriage, wherever it may have been contracted, is contrary to the peace and good order and good morals of society. So far as mere cohabitation is concerned its objectionableness does not depend to any extent upon the place where the bigamous marriage was contracted. We do not forget the defendant's position, that if the marriage is contracted here that constitutes the crime. But if a bigamous marriage contracted elsewhere can so far enter into and characterize the cohabitation here as to make the cohabitation an offense distinct from ordinary illicit cohabitation, then a bigamous marriage contracted here can do the same thing. If in the one case the marriage and the cohabitation can be linked together, and in some sense made to constitute one crime, and thereby made to span State lines, they can in the other case be linked together and made to constitute one crime so as to span whatever time is covered by the cohabitation."

I would therefore say that a prosecution for bigamy under our statute, where the crime is alleged to consist in the contracting of the second marriage, should be instituted in the county where the second marriage takes place, which in the case submitted by you would be Manistee County. Also that under the facts stated, a prosecution could be instituted in Osceola County under the provision of the statute relative to continued cohabitation. However, it would probably be advisable to proceed in the county where the second marriage took place, in preference to the county where the cohabitation was continued. The proofs in the former case could undoubtedly be more readily obtained, and by commencing in that county all question would be avoided.

Yours respectfully,

HORACE M. OREN,
Attorney General.

UNITED STATES AND STATE LAND.—Land granted by the United States to the State of Michigan, to aid in the construction of a railroad from Little Bay De Noquette to Marquette; Marquette, Houghton & Ontonagon Railroad Company, entitled to a patent for lands earned by the Bay De Noquette & Marquette Railroad Co. Commissioner of General Land Office should accept the reconveyance of certain lands.

Lansing, October 25, 1901.

Honorable Aaron T. Bliss, Governor, Lansing, Michigan.

Dear Sir—Referring to the letter of the Commissioner of the General Land Office, addressed to you under date of May 9, 1901, relative to certain lands included in a conveyance made by former Governor Cyrus G. Luce, on September 26, 1889, to the United States, which the General Land Office had refused to accept, and your request that I investigate the same and report to you, I would beg leave to submit the following:

The lands in question are as follows:

Parts of Sections.	Sec.	T. N.	R. W.	Acres.
S ½ of N E ¼	19	51	26	80.00
SE ¼	19	51	26	160.00
NE¼ SW ¼ and NW ¼ SW ¼	19	51	26	84.90
NE ¼ NE ¼	31	51	26	40.00
W ½ NW ¼	31	51	26	88.08
Fractional	5	50	26	46.65
S ½ NW ¼	11	50	27	80.00
W ½ SW ¼	9	50	27	80.00
SW ¼ SW ¼	5	50	27	40.00
Lot No. 2	23	51	27	20.00
SE ¼ NW ¼	25	51	27	40.00
SW ¼ NE ¼	25	51	27	40.00
W ½ SE ¼	25	51	27	80.00
NW ¼	29	51	26	160.00
SW ¼	29	51	26	160.00
W ½ NE ¼ and N ½ SE ¼	29	51	26	160.00
E ½ NE ¼	29	51	26	80.00
S ½ NW ¼ and S ½ NE ¼	33	51	26	160.00
SE ¼	33	51	26	160.00
SW ¼	33	51	26	160.00
NE ¼	1	50	27	158.43
NW ¼	1	50	27	155.32
W ½ SW ¼, SE ¼ SW ¼ and SW ¼ SE ¼	1	50	27	160.00
NE ¼ SW ¼, N ½ SE ¼ and SE ¼ SE ¼	1	50	27	160.00
E ½ and SE ¼ SW ¼	9	50	28	360.00
SW ¼	35	51	28	160.00

These lands formed a portion of 140,717.23 acres certified by the proper officers of the United States to the State of Michigan on account of the grant to aid in the construction of a railroad from Little Bay De Noquette to Marquette, made in conformity with an act of Congress of June 3, 1856, and the later act enlarging the grant, approved March 3, 1865. Under this grant twenty miles of this road was constructed by the Bay De Noquette & Marquette Railroad Company, and under the terms of the latter mentioned act this company was entitled to receive from the State of Michigan 128,000 acres of the lands certified to the State as above recited. Under date of November 20, 1862, this twenty miles of railroad was accepted by the then Governor, Austin Blair. Prior to the patenting of these lands thus earned by the Bay De Noquette & Marquette Railroad Company, the latter company had gone out of existence having been consolidated on August 24, 1871, with the Marquette & Ontonagon Railroad Company, and on September 2, 1872, the latter company was consolidated with the Houghton & Ontonagon Company, the new company taking the name Marquette, Houghton & Ontonagon Railroad Company. The last named company succeeded to all the property, rights, title and interests of the original Bay De Noquette & Marquette Railroad Company, and finally received a patent for the lands earned by the Bay De Noquette & Marquette Railroad Company, but no patent was issued by the State, however, until June 13, 1873, and this patent included not only lands earned on account of the construction of the Little Bay De Noquette road. but also for the construction of a portion of the road from Marquette to Ontonagon. The patent conveyed lands for length of railroad built and accepted by the State, in all seventy-two miles and thirteen hundred and ninety feet, and included a total of 462,243.84 acres, which as I figure it, was slightly in excess of the total amount to which the Marquette, Houghton & Ontonagon Railroad Company was entitled for the length of mileage accepted. It is evident therefore, that for the twenty miles built by the Bay De Noquette & Marquette Railroad Company, full payment in lands was made by the State, but this payment must have been partially made out of lands that had been certified to the State by the United States for the railroad line to be constructed from Marquette to Ontonagon under the terms of the act of Congress previously referred to. It is true that no other patent was issued than the one of June 13, 1873, which served as compensation for the road built on account of the Bay De Noquette branch. This patent has been very carefully examined and the lands hereinbefore referred to do not appear, and were not included in the conveyance. I would refer you also to the certificate of Hon. Edwin A. Wildey, Commissioner of the State Land Office, which is herewith returned to you, which certifies to the same effect.

Referring to other matters inquired of in the letter of the Commissioner of the Land Office, I would state that the Duluth, South Shore & Atlantic Railroad Company succeeded, either by lease or purchase, to the property, rights, and franchises of the Marquette, Houghton & Ontonagon Railroad Company, but I understand that the lands granted to the Marquette, Houghton & Ontonagon Railroad Company by the patent of June 13, 1873, had been previously disposed of and are now mainly held by the Michigan Land & Iron Company. Neither the Duluth, South Shore & Atlantic Railway Company nor the Michigan Land & Iron Company have any title to the lands in question, nor are they asserting any claim against these particular lands.

From the examination that I have made I can see no possible reason why the Commissioner of the General Land Office should not accept the 3,233.38 acres of land included in Governor Luce's reconveyance of 15, 929.33 acres, which was refused to be accepted until further correspondence with the officers of the State of Michigan.

Very respectfully,

HORACE M. OREN,
Attorney General.

PUBLIC LANDS.—Method of procedure in conducting sale of lands reserved from homestead entry.

Lansing, October 30, 1901.

Hon. Edwin A. Wildey, Commissioner of the State Land Office, Capitol, Lansing, Michigan.

Dear Sir—In compliance with your request for information as to the method of procedure in conducting the sale of lands reserved from homestead entry under the provisions of Section 131 of the General Tax Law, as amended by Act No. 141 of the Public Acts of 1901, I will say that after said lands have been reserved and withheld from sale and a minimum price thereon has been fixed by the Land Commissioner and Auditor General, they are required to be advertised and offered for sale by the Land Commissioner at prices discretionary with him in accordance with Act 21 of the Public Acts of 1873. Section 3 of said Act No. 21 of the Public Acts of 1873, provides as follows:

"It shall be the duty of the Commissioner to cause the notice of the restoration of such lands to market to be publicly proclaimed from the front door of the land office in Lansing, one hour before the time of such restoration; and in all cases where there are two or more applicants for the same tract of land present at the time of its restoration to market, the Commissioner shall immediately offer and sell the said tract in the smallest subdivisions of which the same is susceptible, not less than forty acres (unless the tract should be a fractional section or fractional part of a section containing a less number of acres), to the highest bidder: Provided, No bid for any such tract shall be received by the Commissioner unless the price offered shall be equal to the minimum price of such land as fixed by law."

A preliminary consideration is whether all of the descriptions are to be considered as one tract and as such are required to be offered together in case there is but one bidder for the entire tract. I do not so understand it, and I think that each of the separate descriptions upon the advertised list submitted by you constitutes a tract in itself within the meaning of the above section. Although if a number of those descriptions comprise contiguous territory they might be treated as one tract,—a tract being defined by the New Jersey Supreme Court to be, a single lot or parcel of land lying together.

At the sale each tract should be offered separately, and in case there are not two or more applicants for any tract, it may be sold as an entirety.

In case there are two or more applicants for the same tract, it becomes the duty of the Commissioner to offer and sell the same in the smallest subdivision of which the same is susceptible, not less than forty acres (unless the tract should be a fractional section or fractional part of a section containing a less number of acres), to the highest bidder. This would seem to give to the Commissioner the discretion to determine the size of the smallest subdivisions of which a tract is susceptible and to authorize him to sell it in entire sections, or half sections, provided no person was present who desired to bid upon a smaller subdivision.

However, out of the abundance of caution I should advise in all cases where there are two or more applicants for the same tract, the division of the same into parcels as nearly forty acres in size as possible. This I understand has been the previous practice of the Land Department in conducting its sales of State lands, and by following that practice the possibility of making an invalid or illegal sale is diminished.

Respectfully,

HORACE M. OREN,
Attorney General.

INHERITANCE TAX LAW.—Where the value of a remainder or reversion can actually be determined, same should be immediately taxed together with the life or other estate by which it is supported; determination of the tax cannot be suspended beyond the time which the statute fixes. The right to defer payment must be claimed in accordance with the statute.

Lansing, November 15, 1901.

Hon. Edgar O. Durfee, Judge of Probate, Detroit, Michigan.

Dear Sir—I have before me yours of the 30th ult., referring to the inheritance tax upon the estate of Martha E. Gulley, deceased. For answer thereto I would say that the words of survivorship used in clause eight of the will, copy of which clause was enclosed in your letter, must, under the rule in force in this State, be construed as having reference to the death of the testator and vesting, at the time of such death, the remainder therein devised in Sanford B. Ladd and David H. Ladd, or the survivor of them, and their heirs and assigns. In other words if both these devisees were living at the death of the testator the remainder would vest in them both. If but one was living, the other having died without heirs, the remainder would vest in the survivor. If one were living, the other having died with heirs, the survivor and the heirs of the deceased devisee would take together. Porter vs. Porter, 50 Mich. 456; Rood vs. Harvey, 50 Mich. 395; Hilber vs. Hilber, 104 Mich. 274; Rivenett vs. Borquin, 53 Mich. 10.

As to whether the tax upon the remainder should be presently determined and required to be paid, I would say that I think the act for the taxation of inheritances makes specific provision in that regard. Sections 3 and 11 of the act proceed upon the theory that where the value of a remainder or reversion can be actually determined, that remainder or

reversion should be immediately taxed together with the life or other estate by which it is supported. In this case there is no contingency which prevents ascertaining at the present time the value of this remainder, and the result necessarily follows that the tax upon it should be ascertained and determined now and not at the termination of the life estate. I see the force of the difficulties which are presented in case the devisees are not able to pay the tax, as suggested in your letter, but however unfortunate the circumstances may be, I do not see how the determination of the tax can be suspended beyond the time which the statute fixes. The statute makes provision for contingencies of this character in Section 7, but of course the right to defer payment must be claimed within the time limited in that Section and proper security given. There is of course some benefit in having the tax presently ascertained and paid, inasmuch as if now ascertained and paid, simply the value of the remainder, about $9,000, would be subject to taxation, while if determination of the tax and its payment were deferred until the expiration of the life estate, the remainder would then be altered in its character and become a presently existing estate in possession and would be taxed upon that basis, and its value would be about $20,000. However, as above stated, I see no way in which the determination and payment of this tax can be held in abeyance.

Respectfully,
HORACE M. OREN,
Attorney General.

WOMAN'S BUILDING AT AGRICULTURAL COLLEGE.—Liability of architect in drawing contract for the building in accordance with the specifications as agreed upon by the State Board of Agriculture; if changes are made in the original specifications, by the board, and not brought to the knowledge of the architect, he would not be liable.

Lansing, November 15, 1901.

Hon. Hollister F. Marsh, Chairman of Committee on Buildings and College Property, State Board of Agriculture, Allegan, Michigan.

Dear Sir—Referring to the matter of instituting suit against Pratt and Koppe, of Bay City, the architects who had in charge the preparation of plans for the construction of the new woman's building on the Agricultural College grounds, for alleged neglect of Mr. Koppe in failing to draw the contract for said building in accordance with the specifications agreed upon by the State Board of Agriculture, which matter was presented to me by your Committee and certain members of the board at my office on the 30th ult., and to the request then made that I communicate to you my conclusions thereon, I would respectfully submit the following:

The special Legislative Committee appointed during the Session of 1901 to investigate as to certain matters charged against the administration of affairs at the Agricultural College reported in part as follows:

"Your Committee investigated the rumors which had been circulated concerning fraud, and faulty construction of the new woman's building

at the college. We are fully satisfied that the State has a safe, strong, beautiful and much needed building in said structure, and that no member of the State Board of Agriculture received any rake-off or profit in its building. But the testimony does show very conclusively that the supervising architect, Mr. Koppe, of the firm of Pratt & Koppe, of Bay City, was grossly negligent in the duties he agreed to perform. He did not see that the contract was made according to his specifications, left it for others to carry out the details in making of said contract; never read his copy after receiving it from Secretary A. C. Bird, and did not know it was different from his understanding of it (and from what the minutes of the Board of Agriculture set forth), until he, Mr. Koppe, found the construction going on different from what he had calculated; then upon turning to the contracts he found them different from what he expected they were, but permitted the work to proceed in the face of his bounden duty and obligation to the State (and for which he was paid), viz.: to have stopped the work till done according to his specifications. How, when, why and by whom these contracts were changed, Mr. Koppe was unable to explain, and while he permitted some walls in the upper stories to be constructed twelve inches thick where they were to have been sixteen inches thick, it may not and probably never will affect the durability of the structure, yet his unfaithfulness to the State was beyond doubt a gain of six hundred dollars or more to the contractor in its construction. We recommend that Pratt & Koppe be held to the charge of damages to that extent."

On October 23rd of this year the following resolution was adopted by the State Board of Agriculture: "On motion of Mr. Watkins the committee on buildings and college property were instructed to confer jointly with the Attorney General regarding the recommendations of the Legislative investigating committee that legal action be brought against Messrs. Pratt & Koppe, and report same back to the Board at its next meeting. Mr. Monroe moved to amend by adding Mr. Allen to said Committee. Amendment carried. Original motion carried."

On October 30th I met the Committee and certain members of the Board and Secretary Bird at my office and all the records in the matter were submitted to me, and I carefully considered the question of whether valid grounds existed for an action against Mr. Koppe, or his firm, and whether it would be advisable to institute suit.

The facts, as disclosed from the record of the Board and the recollection of its various members and officers who would be called upon to testify in case suit were instituted, disclosed the following: By Act No. 108, Public Acts of 1899, the sum of $83,000 was appropriated for the woman's building and $12,000 for heating and furnishing the same. After the preparation of plans and specifications for the building by Messrs. Pratt & Koppe, tenders were solicited and on September 26, 1899, at a meeting of the Board of Agriculture held at Grand Rapids bids were opened for the building complete, except plumbing, heating, electric wiring and elevators. None of these bids came within the appropriation and it was thereupon determined to submit amended plans to the two lowest bidders, who were requested to submit revised bids. At the time set for the reception of these revised bids tenders were received for the complete building, except heating, plumbing and electric wiring. It was estimated that the architects fees and plumbing and electric wiring, would amount to the sum of $10,000; hence the limits of the appropriation available for

the building, outside of heating, would be $73,000. The revised bids exceeded this amount and hence the Board determined that all the original bidders be invited to revise their previous bids according to amended plans, and submit the same to the Board on October 3rd. On the latter date five bids were received, all in excess, however, of $73,000. After receipt of these bids, Mr. Spear, the next to the lowest bidder, was called before the Board for consultation regarding further amendments to the plans, but the Board failed to agree with him upon reductions that would bring the cost within the appropriation. Mr. Mohnke, the lowest bidder, was then called before the Board for the same purpose. Mr. Mohnke's bid under date of October 3rd, which was then before the Board, had been submitted in writing and is on file with the Secretary of the Board. His bid was for the sum of $75,849.00, and was predicated upon certain changes from the specifications as prepared by the architects. Among these changes which appear in his bid was the following: "Change last stories to twelve inch wall." The minutes of the Board, in referring to the conference with Mr. Mohnke, read as follows: "On motion of Mr. Monroe, Mr. Mohnke was called in for consultation. On recommendation of Messrs. Mohnke and Lohman, the following alterations were made in the plans:

Hemlock for pine in joist, furring, studding, roof and sub-floors.	$600 00
Furring for tile, outside wall of basement	400 00
Corned beads reduced to six feet	150 00
Change upper story from 16-inch to 12-inch wall	600 00
Selected white maple flooring to No. 1	300 00
Yale hardware to Corbin	260 00
Ash finish in basement and pine on fourth floor in place of oak in both	729 00
Panelling to Keene cement	300 00
Findlay brick in place of Cleveland No. 8	1,320 00
Band mould off bedrooms	200 00
Three coats of varnish to two	300 00
Leaving off cornice	300 00
Iron to wood trusses in dining-room	200 00
Adding one foot in width to footing on fourth story part, increase	120 00

With these plans as thus amended Mr. Mohnke submitted a bid upon same for $73,000.00."

It will be noted that the minutes of the Board differed from Mr. Mohnke's written bid in this particular: His bid reads, "Change last stories to 12-inch wall." The minutes read, "Change upper story from 16-inch to 12-inch wall, $600."

The various members of the Board stated that it was their understanding of the matter that it was intended to reduce the wall only in the upper or third story, but each says that he got his idea from the minutes of the Board and did not remember that any variance was intended to be made between Mr. Mohnke's written bid and the actual determination of what the change should be. Mr. Bird, Secretary of the Board, has inquired as to the original stenographic notes from which the minutes of the Board were written, and finds that the stenographer was accustomed to use the same character for both singular and plural, and was guided by the context and her memory in transcribing her notes. The Legislative

Committee undoubtedly predicated its censure of Mr. Koppe upon the terms of the recorded minutes.

It is my opinion, however, that with the written bid of Mr. Mohnke before a Court, and with the lack that exists of positive testimony to the effect that the change from this bid was actually required and sanctioned by the Board, and that Mr. Koppe was informed of this change, it would be impossible to make out a case of negligence against Mr. Koppe such as is charged in the Legislative Journal and such as it would be necessary to prove in order to establish a cause of action. I do not find that the Board has any evidence which would go to show that Mr. Koppe had either negligently or wilfully violated the instructions of the Board in drawing up the contract between the Board and Mr. Mohnke. I would not therefore, advise the institution of proceedings.

Respectfully,

HORACE M. OREN,
Attorney General.

QUARTERMASTER GENERAL.—Commissioned as a Lieutenant Colonel of the 35th Michigan Infantry. Entitled to the salary of Quartermaster General for certain specified time; manner of payment of said claim by the Auditor General.

Lansing, November 16, 1901.

Hon. Perry F. Powers, Auditor General, Capitol.

Dear Sir—From July, 1898, to March, 1899, while William M. White was Quartermaster General of the State of Michigan, he held a commission from the United States as Lieutenant Colonel of the 35th M. V. I. Although holding the latter office, he was permitted under orders from the U. S. War Department to perform and did actually perform, all the duties of the former office.

During the period mentioned he did not draw the salary of Quartermaster General, amounting as I am informed, to the sum of $804.35. On June 19, 1899, he applied to the Attorney General for an opinion as to his right to draw this salary during the period that he held the two offices, and on June 29th of the same year I gave him a written opinion to the effect that his right to this salary was in nowise affected by his holding an office under the commission from the United States. This opinion you will find published in the report of the Attorney General for 1899, on page 181. Although this opinion was given in 1899 it was never acted upon, and the money to which Mr. White was entitled has not been drawn from the treasury. Since the rendering of the opinion Mr. White has become a debtor of the State of Michigan by virtue of his conviction for malfeasance in office, and a conditional pardon granted by the late Governor Pingree. The terms of the pardon were that said White should pay into the treasury of Ingham County in the State of Michigan towards reimbursing the said county for the expenses incurred by it in connection with the grand jury proceedings, and the trial resulting therefrom, the sum of five thousand dollars in five equal installments, the first thereof to be

paid into the treasury of said county on or before the first day of January, A. D. 1901; the next installment of one thousand dollars to be so paid on or before the first day of January, 1902, and so on until finally paid. A further proviso of the pardon was that should the said county of Ingham for any reason decline to receive such payments, then such payments should be made to the State of Michigan. On January 11, 1901, the Board of Supervisors of Ingham County refused to accept the money paid on account of the terms of said pardon and the same is now payable to the State.

I am informed that Mr. White, upon the payment required to be made by him on or before January 1, 1902, desires to have applied the $804.35 due him on account of his salary as Quartermaster General, and I have been verbally requested by you to give an opinion as to your authority and duty in the premises.

I would state that in my judgment the right of Mr. White to have and receive from the Auditor General a warrant in due form upon the State Treasury for the arrears in salary earned by him as Quartermaster General is in nowise affected, either by his having held at the same time an office under the United States, or by his subsequent conviction for malfeasance in office. Nor has the lapse of time affected his right to have such a warrant.

The act making provisions for the payment of the salary of the Quartermaster General, provides, that the amount necessary for the same be appropriated out of any money in the treasury to the credit of the military fund not otherwise appropriated. (C. L. 1897, Sec. 1683.) I do not think the provisions of law relative to the return of unexpended appropriations to the general fund, applicable in this case, and that being true, lapse of time in demanding pay for salary earned under said act, would not necessitate a new appropriation to give the Auditor General authority to issue the proper warrant upon the treasury for the payment of the same.

The modus operandi by which this money may be transferred to the partial satisfaction of the amount due the State on account of the terms of said pardon, would be for Mr. White or his legally authorized representative, at the time of signing the receipt attached to the warrant upon the treasury for the back salary, to file with the Auditor General an order or warrant for the return of said amount into the treasury, to be applied on account of the installment, on account of said pardon, due on or before January 1, 1902. Under such an arrangement, it would seem to me the matter could be properly and lawfully adjusted.

Yours respectfully,

HORACE M. OREN,
Attorney General.

TAX LAW.—Status of land held under part-paid certificate, after forfeiture, in relation to payment of back taxes thereon, upon being resold by the Commissioner of the State Land Office.

Lansing, November 16, 1901.

Hon. Edwin A. Wildey, Commissioner of the State Land Office, Capitol, Lansing, Michigan.

Dear Sir—I am in receipt of your letter of the 6th instant in which you submit the following: "Can this department legally enforce the payment of taxes that were assessed in 1863 and prior years against land held under a part-paid certificate that forfeited in 1863 and afterwards resold without collecting said taxes? Or in other words, should be present owner who purchased this land in 1867, be required to pay the taxes referred to, that were assessed prior to his purchase or to the passage of Act No. 23 of the Session Laws of 1875?"

The question of law which seems to be involved is—What was the status of land held under a part-paid certificate after forfeiture, and what provision did the statute make for the sale of the same in 1867? In other words, did the statute at that time require the person purchasing the forfeited land, to pay all back taxes on the same?

Section 11 of the tax law of 1853, being Section 792 of the Compiled Laws of 1857, provides: "Any person holding a certificate of purchase of university or primary school lands, or occupying the same, shall be liable to be assessed therefor as if he were actually owner thereof: Provided, however, That the same shall be assessed as personal property and not as real estate, and the tax thereon shall be collected in the manner hereinafter provided." In 1858 the Legislature provided that part-paid swamp lands should be taxed the same as part-paid primary school lands, and in the same year the Legislature provided, in Section 11 of Act 32, that "Any person holding a part-paid certificate of purchase of university, primary school, State building, swamp or salt spring lands, or occupying the same, shall be liable to be assessed therefore as if he were the actual owner thereof: Provided, however, That the same shall be assessed as personal property and not as real estate, and the taxes thereon shall be collected in the manner hereinafter provided."

It is evident from the above sections that the law made ample provision for taxing State land held on part-paid certificates prior to 1863, the year of the forfeiture in question. The act in force at the time of the forfeiture in 1863, which made provision for the forfeiture of certificates on part-paid university and primary school lands and for a resale of such lands so forfeited, was Chapter 60 of the Revised Statutes of 1846, same being Chapter 144 of the Compiled Laws of 1871. This chapter provides for the sale of university and school lands; provides the minimum price of such lands, the terms of payment, and for the issue of part-paid certificates thereon. It also provides for the forfeiture of such lands upon the failure of the purchaser to continue his payments as required by the certificate. Section 6 of this chapter provides: "In case of non-payment, either of principal or interest, when due, according to the provisions of the preceding section, or according to the terms of the certificate of sale, as the case may be, such certificate shall become void and of no effect from the time of such failure, and

the Commissioner may take immediate possession thereof and resell the same."

Section 16 provides: "All university or school lands which have been or may be forfeited by the non-payment of either principal or interest, and which have not been offered at public auction after forfeiture, before the same shall be subject to private entry, shall be re-offered for sale at public auction, and the minimum price of all portions or tracts upon which improvements shall have been made, shall be such as shall be determined by the Commissioner, in the manner hereinafter in this chapter provided."

The manner hereinafter provided for in the above section, is found in Sections 21, 22, 23 and 24 of the chapter. These sections provide that a list of forfeited lands and forfeited and unsold lands improved, should be sent to the county clerks and be by them referred to the several supervisors, who should appraise the value of the improvements on such lands; that this appraised value should be returned to the Commissioner of the State Land Office, and that this appraised value should be added to the minimum price per acre provided for in the prior sections of the chapter, and that such should be the minimum price per acre of any such improved tract or parcel. Section 24 provided that the unimproved forfeited lands should continue at the minimum price per acre of unsold and unimproved lands as established in a former section of the chapter.

Section 20 of this chapter provides in part. "In all cases where the rights of a purchaser shall have become forfeited, under the provisions of this chapter, by his failure to pay the amount due upon his certificate of purchase, if such purchaser, his heirs or assigns, shall, before the time appointed for the sale of the lands described in such certificate at public auction, pay to the Commissioner of the Land Office, the full amount then due and payable upon such certificate, and twenty-five cents on each dollar of such amount in addition thereto, such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns; and said certificate, from the time of such payment, shall be in full force and effect as if no such forfeiture had occurred: Provided, however, That in case the lands described in any certificate of purchase shall not be redeemed after forfeiture, before the day of sale, and the same shall be purchased at such public sale, or from the State at private sale after such public offering, in the manner now provided by law, by any other person than the holder of such certificate, then and in that case such subsequent purchaser shall pay, at the date of such purchase, into the State Treasury the amount now required by law for the purchase of lands at such forfeit sales, and the Treasurer shall be required to give his receipt therefor, which shall state in full the amount paid, together with the description of the lands on which the same is paid, and the name of such purchaser."

In 1875 the above section was amended in such a way as to include all taxes and charges due and unpaid on any forfeited lands in the amount required to redeem the same. It also provided that the purchaser of such forfeited lands should pay, in addition to the minimum price fixed by the Commissioner, all taxes and charges due and unpaid thereon. Section 4 of the chapter was also amended, and as amended, provided that a part-paid certificate should be forfeited, upon the failure of any person holding the same, failing to pay the taxes on said land for the preceding year.

It appears therefore that the law in force in 1867 did not require a purchaser of forfeited university or school lands to pay taxes on the same

assessed prior to the forfeiture and remaining unpaid, and I am of the opinion that the law then in force would govern.

Section 29 of Chapter 60 of the Revised Statutes of 1846, above referred to, provides, referring to State building lands: "The terms and conditions and manner of sale of said lands, and of payment, both of principal and interest, therefor, shall be the same in all respects as are prescribed in this chapter for the sale of university and school lands, and payment for the same, and the said Commissioner shall issue certificates of purchase upon the sale thereof, in the same form and with the like effect as upon the sale of university or school lands." The same provision is made in Section 31, relative to State salt spring lands, and Section 17 of Act 31 of the Laws of Michigan for 1858, provides in part: "All provisions of law now in force not inconsistent with this act, and applicable to the public lands of this State, shall be held to apply to State swamp lands."

The conclusion above reached relative to State, university and school lands would therefore undoubtedly apply to State building lands, State swamp lands, and State salt spring lands.

Respectfully,

HORACE M. OREN,
Attorney General.

STATE BOARD OF REGISTRATION IN MEDICINE.—Business of said Board shall be transacted by and receive a concurrent vote from at least seven members.

Lansing, November 21, 1901.

Hon. Beverly D. Harison, Secretary, State Board of Registration in Medicine, Sault Ste. Marie, Michigan.

Dear Sir—I am in receipt of your letter of the 18th instant, in which you request my opinion as to the concurrence of members of the State Board of Registration in Medicine in the transaction of business under and pursuant to Act No. 237, Public Acts of 1899.

The State Board of Registration in Medicine is composed of ten members, any seven of whom constitute a quorum for the transaction of business. In the absence of a constitutional or statutory regulation to the contrary, it is a general rule applicable to public boards that a majority of a quorum is sufficient for the transaction of its business. I find, however, that the Legislature, in Section one of the act above referred to, has expressly provided that the business of said Board shall be transacted by, and receive a concurrent vote from, at least seven members. The purpose of this provision is at once apparent when we take into consideration the fact that the members of said board are appointed from several different schools of medicine, and such requirement should be adhered to by said Board in the transaction of its business.

Yours Respectfully,

HORACE M. OREN,
Attorney General.

BOARD OF STATE AUDITORS.—Authority of Board to audit and allow the bill for printing, publishing and binding of the Farmers' Institute Bulletin.

Lansing, December 4, 1901.

The Honorable Board of State Auditors, Lansing, Michigan.

Gentlemen—I am in receipt of your communication of November 29th, enclosing letter of A. C. Bird, Secretary of the State Board of Agriculture, dated November 22nd, relative to the printing and binding of Farmers' Institute Bulletin, bill for which is now before your honorable board for audit and allowance.

The first five Sections of Act 137 of the Public Acts of 1899, provide for an appropriation of $5,500 for the year ending June 30, 1900, and $5,500 for the year ending June 30, 1901, to be expended by the State Board of Agriculture in holding institutes and to establish and maintain courses of reading and lectures for the instruction of citizens of this State in the various branches of agriculture, mechanic arts, domestic economy and the sciences relating thereto. Section 6 of this act provides for the publishing of an annual report to be known as the Farmers' Institute Bulletin, of not to exceed, two hundred and fifty pages, etc., the expense for publishing and printing to be allowed by the Board of State Auditors. Act 232 of the Public Acts of 1901 is an act entitled, "An act to extend aid to the Michigan Agricultural College," and in substance provides for an appropriation each year of not to exceed $100,000 for the purposes of said act. Under and pursuant to Section 3 of said act the State Board of Agriculture is authorized to hold institutes and to establish and maintain courses of reading and lectures for instruction in the various branches of agriculture, mechanic arts, domestic economy and the related sciences, etc., which courses of reading, instruction and lectures are to be conducted, governed and controlled by Act No. 137 of the Public Acts of 1899 providing for the same. This section also contains a proviso that not less than $7,500 shall be expended annually for the purposes provided in said act.

After a careful examination of the two acts in question I am of the opinion that Section 3 of Act 232 of the Public Acts of 1901, simply provides for the expenditure of not to exceed $7,500 for the identical purposes for which $5,500 was annually appropriated under the Act of 1899, and that said sum of $7,500 would come out of the annual appropriation of $100,000 provided for by said Act No. 232. It does not appear, however, that it was the intent of the Legislature to in any way modify the provisions of Section 6 of the Act of 1899, relative to the publishing, printing and binding of the annual report by the State Board of Agriculture, to be known as the Farmers' Institute Bulletin, and in my opinion this section is still in force, and that it would be the duty of your honorable Board to audit and allow the expenditures incurred, pursuant to said section in printing and binding said report.

Respectfully,
HORACE M. OREN,
Attorney General.

INDENTURING OF INMATES OF THE INDUSTRIAL HOME FOR GIRLS.—The laws of this State do not contemplate placing of such inmates in the care of non-residents of Michigan.

Lansing, December 4, 1901.

Mrs. May Stocking-Knaggs, Secretary, Board of Guardians Industrial Home for Girls, Bay City, Michigan.

Dear Madam—Your letter of the second instant received and contents noted. As I understand it, the matter of indenturing the girls in question, was submitted to this department by the superintendent of the Industrial Home for Girls, on September 21st, and she was advised by Mr. Chase that the laws of this State, providing that inmates of the Industrial Home for Girls may be indentured, contracted or otherwise placed in families, do not contemplate the placing of such inmates in the care of families of persons who are non-residents of the State of Michigan, which construction of the laws relating thereto is correct. Under Section 2213 of the Compiled Laws of 1897, the Board of Control would have authority to discharge the girls in question from said institution, if in its judgment they are sufficiently reformed to make it advisable so to do, but the Board of Control would not be in a position to enforce any restrictions imposed, relative to their care or maintenance outside of the State.

Respectfully yours,

HORACE M. OREN,
Attorney General.

ADVISORY BOARD IN THE MATTER OF PARDONS.—COMPENSATION OF.—Members of Board entitled to compensation for not to exceed one hundred and fifty-six days in any two years.

Lansing, December 10, 1901.

Hon. Charles G. Turner, Traverse City, Michigan.

Dear Sir—Your favor of October 31st, inquiring as to my opinion upon the number of days the Board of Pardons are allowed to receive pay for under the present law in any two years, and also in any one year, has been brought to my attention. You are no doubt familiar with the opinion given by Mr. Maynard, to be found on page 67 of the Attorney General's report for 1898. I do not think Mr. Maynard's conclusion are correct. It is undoubtedly true that the Legislature had in mind calendar months when the six months' limitation was placed in the act, but when the per diem compensation was provided, I think that it undoubtedly referred to secular days. The greatest number of secular days in any one month, would be twenty-six, and for the six months would be one hundred and fifty-six. The act does not provide the maximum for one year, but for

two, and I do not think it would be a violation of the law if the entire one hundred and fifty-six days were paid for in one year, although after that, the members of the Board would have to serve without compensation until the expiration of the two years.

Yours very truly,
HORACE M. OREN,
Attorney General.

STATE BOARD OF HEALTH.—Members of, not entitled to per diem compensation from the fees collected under Act 233, Compiled Laws of 1897.

Lansing, December 20, 1901.

Henry B. Baker, Secretary, State Board of Health, Capitol, Lansing, Michigan.

Dear Sir—I am in receipt of your communication of the 10th instant, wherein you submit for my consideration the following: "In view of the fact that Act No. 233, Laws of 1901, places more work upon the State Board of Health and also that it might be hard at times, and has once been found impossible, to get a quorum of the Board together for the purpose of carrying out the provisions of the law, would it be legal for this Board to allow compensation to its members for work in connection with Act No. 233, Laws of 1901? To get the point properly before you, I will ask for the following information: 'Would it be legal for the State Board of Health to allow its members from fees collected, ten dollars per day for work in connection with Act No. 233, Laws of 1901?' I say ten dollars per day for the reason that that is the amount usually paid to members of other Boards?"

Act No. 233 of the Public Acts of 1901 is an act entitled, "An act to authorize the State Board of Health to determine the qualifications of, and issue licenses to, persons engaged in preparing for transportation human bodies dead of infectious or contagious diseases," Section 3 of which provides in part as follows: "The fees collected by the Board of Health shall be used to defray the expenses incurred by said Board in the enforcement of this act, and for no other purposes." The State Board of Health was established by Act No. 81 of the Session Laws of 1873, and in Section 6 of that act is contained the following provision: "The members of the Board shall receive no per diem compensation for their services, but their traveling and other necessary expenses, while employed on the business of the Board, shall be allowed and paid.

While the Act of 1901 imposes additional duties upon the State Board of Health, I do not believe that it was the intention of the Legislature by that act to abrogate the prohibition contained in the Act of 1873. The Act of 1901 expressly provides that the fees collected under the provisions thereof shall be used to defray the expenses incurred in the inforcement of that act, and for no other purposes, and in my opinion could not be construed as authorizing the payment of a per diem compensation to the members of said Board for services rendered in connection therewith.

An examination of the laws creating other State boards, the members of which receive a per diem compensation, will show that in each instance where compensation is awarded, specific provision is made therefor.

Respectfully,

HORACE M. OREN,
Attorney General.

BOARD OF EXAMINERS OF BARBERS.—Expense incurred by secretary and treasurer of, under a statute which has been declared unconstitutional; Board of State Auditors have no authority to audit.

Lansing, December 20, 1901.

The Honorable Board of State Auditors, Capitol, Lansing, Michigan.

Gentlemen—I am in receipt of your communication of the 14th instant, enclosing vouchers of Mr. R. M. Fillmore, representing expenses incurred by him as secretary and treasurer of the Board of Examiners of Barbers, under Act No. 235 of the Public Acts of 1901; also enclosing voucher of F. M. Van Horn, for expenses incurred by him as secretary of the Board of Examiners of Barbers, under Act No. 212 of the Public Acts of 1899. Act No. 235 of the Public Acts of 1901, having been declared unconstitutional by the Supreme Court in the Case of Fillmore vs. Van Horn, 8 D. L. N. 826, my opinion is requested as to the authority of your honorable board to audit and allow the claim of Mr. Fillmore, and also as to the standing of the claim of Mr. Van Horn.

In reply thereto would say, that it is my opinion that the claim presented by Mr. Fillmore is not such a claim as your honorable board has authority to audit and allow. The rule in this regard, where a statute is adjudged unconstitutional, is stated in Cooley on Constitutional Limitations as follows: "When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void. It constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made, and what is true of an act void in toto, is true also as to any part of an act which is found to be unconstitutional, and which consequently is to be regarded as having never at any time been possessed of any legal force."

Regarding the claim presented by Mr. Van Horn, I would say that Act 235 of 1901, having been adjudged unconstitutional, Act No. 212 of 1899 would remain in force, and the expenses incurred by Mr. Van Horn as secretary of the Board of Examiners of Barbers, under that act, would be a proper claim to be passed upon by your honorable board.

Respectfully,

HORACE M. OREN,
Attorney General.

BOARD OF THE PAN-AMERICAN EXPOSITION MANAGERS.—Has authority to publish the report of the commission.

Lansing, December 20, 1901.

Hon. George H. Barbour, President, Michigan Pan-American Commission, Detroit, Michigan.

Dear Sir—Your letter of the 10th inst., to Hon. Perry F. Powers, Auditor General, relative to the publication of a report of the Michigan State Commission of the Pan-American Exposition, has been referred to this office.

The Board of the Pan-American Exposition Managers was created, and its duties and powers defined, by Act 1 of the Public Acts of 1901. Sections four and five of this act enumerate the general duties and powers of the commission, and require the Board to render a report of its proceedings and expenditures quarter yearly to the Governor, and also a final detailed report of receipts and expenditures to the Governor at the expiration of their term of office. Section 6 provides the method of drawing the moneys appropriated by the act from the State Treasury, and also provides the method of disbursement. Sections 4 and 5 of the act provide as follows:

"Sec. 4. The said Board shall have charge of the exhibits of the State and those of its citizens in the preparation and exhibition thereof at the Pan-American Exposition, of nineteen hundred and one, of the natural and industrial products of the State, and of objects illustrating its history, progress, educational and material welfare and future development, and and in all other matters relating to the said Pan-American Exposition; *it shall communicate with the officers of, and obtain and disseminate through the State all necessary information regarding said exposition,* and in general have and exercise full authority in relation to the participation of the State of Michigan and its citizens, in the Pan-American Exposition, of nineteen hundred and one.

Sec. 5. The said board shall make a report of its proceedings and expenditures quarter yearly to the Governor, and at any time upon his written request, and at the expiration of their term of office shall make a final detailed report of receipts and expenditures to the Governor, said reports to be by him submitted to the Legislature."

You state in your letter that there is $10,000 still left in the fund created by the act, and undoubtedly if the publication of a report of the commission is properly included among the duties and powers of the board, it would have the power to expend a part of this fund for that purpose. Unquestionably, broad powers and duties are conferred upon the board by the above sections, among which are, that "it shall communicate with the officers of, and obtain and disseminate through the State, all necessary information regarding said exposition," and "shall make a final detailed report of receipts and expenditures to the Governor." It cannot be questioned but what all power and authority necessary to carry out the provisions of the act, not expressly granted, is necessarily implied.

Act 44 of the Public Acts of 1899, an act providing for the distribution of laws, documents, reports, etc., contains the following provision:

"Sec. 31. * * * Provided, The Board of State Auditors shall not audit

or allow claims for the publication of any reports or documents except such as are specified in this act, except that of any regular or special message of the Governor as many copies as he shall deem necessary, not to exceed ten thousand, shall be printed and delivered to him on the order of the Secretary of State." This proviso would not, however, affect the publication of a report by the commission. Under Act 1 of the Public Acts of 1901, which expressly or impliedly authorized such publication, and provided a fund for the purpose of carrying out the provisions of the act, I have reached the conclusion, therefore, that the commission would have the authority to publish the report in question.

Respectfully,

HORACE M. OREN,
Attorney General.

INHERITANCE TAX.—The transfer of furniture to the heirs of a deceased person, is taxable, unless the heirs are exempt from taxation on personal property under Section 3842 of the Compiled Laws.

Lansing, December 27, 1901.

Hon. David S. Frackleton, Judge of Probate, Fenton, Michigan.

Dear Sir—In answer to your communication desiring an opinion as to whether the transfer of furniture, passing to the heirs of a deceased person, is exempt from taxation under the provisions of Act 188 of the Public Acts of 1899, I would say that Section 1 of Act 188 of the Public Acts of 1899, provides in part that "After the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, etc."

It appears from the above section that it is not the property but the transfer of the property that is taxable under our inheritance tax law, and that only such persons or corporations are exempt from taxation on this transfer, as are by law exempt from taxation on real or personal property. The fact, therefore, that the property was a particular class of personal property, as furniture, would not affect the question, and the heir in order to be entitled to an exemption on personal property, whatever its nature, must be a person or corporation exempt by law from taxation on personal property. Section 9 of the general tax law, same being Section 3832 of the Compiled Laws of 1897, enumerated the persons and corporations in this State exempt from taxation on personal property. An examination of this provision will enable you to determine whether or not the heirs referred to in your communication are exempt from taxation on the transfer of the property in question.

Very respectfully,

HORACE M. OREN,
Attorney General.

FRANCHISE FEE.—Michigan Central Railroad Company not liable to a tax in the nature of a franchise fee, in surrendering its special charter, and re-organizing under the general railroad law of this State, in compliance with Act 2 of Extra Session, Law of 1900.

Lansing, December 28, 1901.

Hon. Fred M. Warner, Secretary of State, Lansing, Michigan.

Dear Sir—Referring to the question of the duty of the Michigan Central Railroad Company to pay, and your duty to require such company to pay, the franchise fee required by Act 182 of the Public Acts of 1891, as amended, as a condition of its re-organization under the provisions of Section 6225, C. L. 1897, as provided for in Act No. 2 of the Acts of the Extra Session of 1900, approved October 15, 1900, I will say, that after an examination of the several statutes bearing upon the question, I have reached the conclusion that the Legislature intended in said act to permit the said Michigan Central Railroad Company to surrender its charter and re-organize prior to the 31st day of December, 1901, without the payment to the State of any fees or charges, whether franchise fees or otherwise.

This conclusion is based upon the following considerations. Act 182 of the Public Acts of 1891, as amended, requires the payment of a franchise fee in four classes of cases.

1. Upon each and every increase of the capital stock of a corporation organized and doing business within this State.

2. Upon the capital stock of every foreign corporation or association hereafter permitted to transact business in this state, which had not prior to the amendment of the Act of 1893, filed or recorded its articles of association under the laws of this State.

3. Upon the capital stock of all corporations whose term of corporate existence, as fixed by their articles of association, shall have expired or be about to expire by limitation, and who shall renew such corporate existence.

4. Upon the capital stock of every corporation or association hereafter incorporated or formed, by consolidation or otherwise, by or under any general or special law of this State which is required by law to file articles of association with the Secretary of State.

That the case in hand does not come under either of the first two classes of cases above outlined is self-evident and needs no discussion.

That it does not fall within the third class becomes apparent from an examination of the fourth section of the Franchise Fee Law (8577 C. L.), in connection with the facts and circumstances surrounding the existence of the Michigan Central Railroad Company. With this class of corporations the fee is required upon a renewal of such corporate existence, where the existence, *as fixed by their articles of association,* shall have expired or shall be about to expire by limitation. There is no limitation upon the term of existence fixed in the charter of the Michigan Central Railroad Company, the corporation being created in perpetuity. It necessarily follows, that the re-organization, pursuant to a Legislative permission, which amounts to a Legislative requirement, cannot be considered as a renewal of the term of corporate existence fixed by the articles of association, when the charter fixed no limitation upon the existence of the corporation.

That the corporation in question does not come within the fourth class above enumerated is not so clear, and if we were to be guided alone by the literal terms of the franchise fee law the conclusion might readily be reached, that the Michigan Central Railroad Company came within this class of corporations and would, therefore, be required to pay the franchise fee. We are not, however, in determining this question, confined to an examination of the literal terms of the Franchise Fee Law, nor required to be governed thereby, but we must take into consideration all acts parimateria, and must discover and effectuate the intent of the Legislature as expressed in those acts. The first act to be considered is No. 2 of the Extra Session of 1900, approved October 15, 1900; by this act the charter of the Michigan Central Railroad Company is repealed. The right is reserved to the company to proceed against the State for the recovery of damages sustained, and the company is permitted to surrender its charter and re-organize under Section 6225, C. L. 1897.

By Act No. 4 of the Extra Session of 1900, approved October 15, 1900, detailed provision is made for the institution of actions against the State for the recovery of damages sustained in case of the repeal or revocation of special charters of railroad companies.

By Section 6225, C. L. 1897, being Section 3 of Article 1 of the General Railroad Law, provision is made by which specially chartered railroads may surrender their charters and become corporations existing under the General Railroad Law.

From these acts it is apparent that the action about to be taken by the Michigan Central Railroad Company to re-incorporate under the general railroad law is not voluntary, but has been forced upon it by the Legislature in the supposed advancement of the interests of the State. From the very nature of the transaction through which the company gives up its special charter and existence thereunder, it necessarily results that the Legislature meant to attach as few impediments and obstructions (pecuniary at least), to the change from a special chartered road to one doing business under the General Railroad Law as possible; and that it intended such company should be permitted to avail itself of the privilege of re-incorporation granted, free of charge by the State.

a. The corporation does not, in reality, go out of existence and become re-created, but the old corporation is, by the action of its stockholders, taken pursuant to the statute, metamorphosed into one of a different character with additional duties and obligations, and at no period does the corporation cease to exist, or are contract or property rights held in abeyance; hence, it follows, that in the strict sense of the word, and in the sense in which the words are used in the franchise fee law, no corporation is "incorporated or formed by consolidation or otherwise."

b. Those corporations of the fourth class above enumerated, are those which are "required by law to file articles of association with the Secretary of State." The Michigan Central Railroad Company, for the purpose of effecting its re-incorporation, is not required to file articles of association with the Secretary of State, but it is simply required to file a certificate signed by its President and Secretary, setting forth certain facts, the effect of which certificate is a surrender of its corporate rights under its special charter and subjection to the general railroad law.

c. By the act repealing the charter of the railroad company in question and permitting it to re-incorporate, the right is reserved to it to recover from the State any damages sustained by such repeal. If it were required

to pay the franchise fee in question, such franchise fee would undoubtedly become an element of damages in its action against the State and could be recovered with interest. It would be an extreme, and even an absurd state of affairs if the Legislature intended to and did require the payment by this corporation of the franchise fee in question and then permitted it to recover the franchise fee in question as one of the damages, if any resulted, of the repeal. This proposition, in itself, is a complete answer to any claim that the Michigan Central Railroad Company is required to pay the franchise fee.

d. There is also a grave question as to whether the franchise fee act was intended to apply to the surrender of corporate charters and subjection to the General Railroad Law as provided in Section 6225, C. L. 1897, whether such surrender was voluntary or involuntary. It is, however, unnecessary to pass upon this question generally at this time, it being sufficient for the purposes of this question to say, that so far as the Michigan Central Railroad Company undertakes under this section to surrender its special charter and to subject itself to the General Railroad Law, it is not liable to a tax in the nature of a franchise fee for the privilege of so doing.

What has been said necessarily applies to all fees, recording, filing or otherwise, and so far as the duty to file or record its articles to carry out the purposes of the Statute is imposed upon the Michigan Central Railroad Company, no fees can be required of it; but it must, as was intended by the Legislature, be permitted to re-incorporate free of charge by the State.

Respectfully,
HORACE M. OREN,
Attorney General.

MEDICAL LAW.—Does not operate to prevent Osteopaths from appending the letters M. B., or the title of Doctor or "Dr." to their names.

Lansing, January 8, 1902.

Dr. B. D. Harrison, Secretary, State Board of Registration in Medicine, Sault Ste. Marie, Michigan.

Dear Sir—I am in receipt of your letter of the 4th instant, relative to the use of the letters M. B. or M. D. or the prefix or title of Doctor or "Dr.", by Osteopaths registered under and pursuant to Act 78 of the Public Acts of 1897. The Medical Law of 1899 exempted Osteopaths, registered under and pursuant to Act 78 of the Public Acts of 1897, from the provision of said Act of 1899. It would therefore follow that the Medical Law of this State would in no way operate to prevent Osteopaths from appending the letters M. B. or M. D. or the title of Doctor or "Dr.," or any other sign or appellation to their names.

Respectfully yours,
HORACE M. OREN,
Attorney General.

INCORPORATED VILLAGES.—May borrow money in anticipation of collection of taxes, for the year, after same have been spread. Incorporated Villages owning electric lighting plant may supply power for pay to factories in village where plant is located.

Lansing, January 8, 1902.

Hon. Frank S. Neal, Northville, Michigan.

Dear Sir—Your letter of the 7th inst., received and contents noted. Replying thereto would say that under and pursuant to Section 21 of Chapter 9 or the act for the Incorporation of Villages of this State, the common council of the village would not be authorized to borrow money in any year in anticipation of the collection of taxes for the same year, until after the spreading of the tax; otherwise there would be no way of determining the amount which the common council would be authorized to borrow. Where money is borrowed, other than in anticipation of the collection of taxes, it must be borrowed under and pursuant to the provisions of Sections 22 and 23 of Chapter 9 of said act.

I know of no reason why an electric lighting plant owned by a village could not lawfully supply power for pay to factories in the village where such plant is located.

Yours respectfully,
HORACE M. OREN,
Attorney General.

GAME LAW.—A statute substantially reenacted by a repealing act is not destroyed, or interrupted in its operation. A greater penalty cannot be inflicted than was provided for by the statute which was in force at the time the offense was committed.

Lansing, January 22, 1902.

Frank L. Prindle, Prosecuting Attorney, Gladwin, Michigan.

Dear Sir—I am in receipt of your letter of the 13th instant, relative to the case of People vs. Bennett, which is a prosecution for the capturing of a fawn in the spotted coat. The offense in this case was committed after the passage of Act 217 of the Public Acts of 1901, but prior to the taking effect of said act, and, as I understand it, complaint was made on the fifth day of September, 1901, for violations of the provisions of Act 159 of the Public Acts of 1897, relative to the capturing of fawn in the spotted coat. The provisions of the acts in question relative to the capturing of a fawn in the spotted coat, are practically identical, and the title of the Act of 1901, is "An act to revise and amend the laws for the protection of game and birds," and which, among other things, repeals the Act of 1897. The provision in the 1901 statute relative to capturing a fawn in the spotted coat being practically identical with the provisions contained in the Act of 1897, it cannot be contended that the passage of the Act of 1901, would operate as a repeal of this provision in the Act of 1897, but, there

being no intermission, these provisions would remain continuously in operation. In this connection I quote from Bishop on Statutory Crimes, 3d Ed. Sec. 181 as follows: "The repeal of a statute, accompanied by a reenactment of its terms, or of its substantial provisions in any other forms of expression, does not break its continuity, and there is no moment when, whatever words of repeal are employed, it can be said to be repealed." Endlich on Interpretation of Statutes, Section 490, lays down practically the same rule. As bearing upon this question I also call your attention to the following Michigan cases: Moore vs. Township of Kenockee, 75 Mich. 332; Markle vs. Township of Bennington, 68 Mich. 133; Alexander vs. Big Rapids, 70 Mich. 224, and Dennison vs. Allen, 106 Mich. 300. See also cases: St. Louis vs. Foster, 52 Mo. 513; Scheftels vs. Tabert, 46 Wis. 439; Laude vs. Chicago, &c. Ry Vo., 33 Wis. 640; Meddleton vs. New Jersey West Line R. R. Co., 11 C. E. Greene, 269; State vs. Baldwin, 45 Conn. 134.

A statute substantially reenacted by a repealing act is not destroyed or interrupted in its operations. Fords vs. Escambie Co., 28 Fla. 26; 9 S. R. 446. A reenactment by an amendatory statute does not prevent the prosecution for felony previously committed, the two acts blending so that there is no intervening time during which no offense existed. Sage vs. State, 127 Ind. 15; 26 N. E. 667. See also the following cases: State vs. Williams, 117 N. C. 753; State vs. Sutton, 100 N. C. 474; State vs. Gumber, 37 Wis. 298; State vs. Wish, 15 Neb. 448; Hair vs. State, 16 Neb. 601. These cases clearly hold that the repeal of a criminal law by an amendatory act, which substantially reenacts a provision of the old statute, where the repeal and reenactment were intended to continue in force the uninterrupted operation of the old statute, prosecutions would lie for an offense committed under the earlier statute. Hawley & McGregor in their work on Criminal Law, 3rd Ed., page 64, lay down the following rule: "But the repeal of a Criminal Law by an Amendatory Act which changes the Repealed Act only by reducing the punishment, when the repeal and reenactment are intended to continue in force the uninterrupted operation of the old statute, will apply to crimes committed before the new act takes effect, and the offender may be punished under the new statute."

I can see no reason, under the authorities which I have presented, why the case of People vs. Bennett, should not proceed the same as though the Act of 1901 had not been passed by the Legislature. Of course, in case of conviction sentence would have to be imposed in accordance with the penalty provided for in the Act of 1901, but under no circumstances could a greater penalty be imposed than that provided for by the Act of 1897, which was in force at the time the offense in question was committed.

Respectfully,

HORACE M. OREN,
Attorney General.

INHERITANCE TAX LAW.—Contract for the sale of land, how treated for purpose of taxation under Inheritance Tax Law.

Lansing, January 23, 1902.

Hon. Perry F. Powers, Auditor General, Capitol, Lansing.

Dear Sir—In reference to the question submitted by Mr. Humphrey, State Accountant, as to whether a contract for the sale of real estate is to be treated as real estate or personal property for the purposes of taxation under the Inheritance Tax Law, I would say that the question you present has been passed upon and determined in the late case of Bowen vs. Lansing, et al., 8 D. L. N. 890. There the question of the character of the interest of a vendor under a land contract was before the court, being presented upon these facts; the owner of certain real estate contracted to convey it upon payment of a certain consideration, before payment in full of the consideration, and before giving a deed, the vendor died, the land in question was then levied upon for a debt of the son and only heir of decedent, on the theory that the interest of the deceased vendor therein was realty vesting in the heir, and the levy was questioned on the ground that the interest of the vendor was personalty and vested in the administrator. The court determined that while the vendor held the legal title to the land in question, he held that legal title in trust for the vendee, and that the equitable title to and interest in the real estate belonged to the vendee, subject to the vendor's claim for the purchase money secured thereby, citing numerous Michigan and other authorities, the court used language which would indicate the relative interests and titles held by the vendor and vendee as follows:

"As the foregoing authorities indicate that the vendor's title is only a trust coupled with an interest by way of security for a debt, which is personalty, so the following (cited by counsel), are in harmony in holding that the vendee is the cestui qui trust, as to the legal title and that his interest is real property and descends to his heirs (in equity), who are the proper ones to file a bill for specific performance."

A seeming conflict with this case occurs in re Estate of Henry Pulling, deceased, 97 Mich. 375. A careful examination of that case indicates that the sole question there presented to the court was whether, as between the widow and the estate, the interest in lands sold upon contract should be treated as realty or personalty, and the court there holds, simply that the bare legal title to realty is sufficient to entitle the widow to dower in any beneficial interest which her husband might possess therein, and seems to have been based upon the rule that the widow of a trustee is entitled to dower in trust lands to the extent of his beneficial interest.

Respectfully,

HORACE M. OREN,
Attorney General.

PLUMBING AND DRAINAGE LAW.—Person holding a plumber's license is entitled to practice his calling in any city of this State, upon presenting his license and registering with the Local Board of Health.

Lansing, January 23, 1902.

L. W. Anderson, Esq., City Engineer, Grand Rapids, Michigan.

Dear Sir—Your letter of the 13th inst., in which you request my opinion as to the interpretation of Act. No. 222 of the Public Acts of 1901, relative to the scope of a license issued by a local board under said act, is received. The particular question asked by you is whether or not a license issued under the act by a local board would be good in any other city of this State, provided the holder of such license should register with the Board of Health of such other city. In reply thereto would say that after a careful examination of the act in question I have reached the conclusion that a person, holding a license properly issued by the board of one city of this State, would not be required to take an examination upon desiring to follow his calling in another city of this State, but would only be required to present his license and register with the Board of Health of the city in which he wished to practice.

Respectfully,

HORACE M. OREN,
Attorney General.

CORPORATION LAW.—Oak Grove, a corporation is required by the existing law to file a report annually.

Lansing, February 7, 1902.

Dr. O. B. Burr, Flint, Michigan.

Dear Sir—In reference to your request for opinion upon whether Oak Grove, a corporation organized under the Laws of this State, whose principal office is located at Flint, is required to file annual reports, I would say that I have examined the opinion prepared by Hon. John J. Carton upon this question with the result that I concur in the conclusion reached by him, to the effect that this corporation is required by existing laws to file annual reports.

I assume the correctness of the statements made in Mr. Carton's letter as to the statutes under which this corporation was organized, and the several amendments which have been made thereto. According to his statement Oak Grove was organized in 1890 under the provisions of Act No. 43 of the Session Laws of 1867, being Sections 4800 to 4802 inclusive. This act is very brief and incorporates in its provisions, by reference, the applicable provisions of the act relating to the formation of corporations for mining, smelting, manufacturing and other purposes, approved February 5, 1853, being Sections 1799 to 1824, C. L. 1857, by providing that corporations organized thereunder (the Act of 1867), "shall have and possess all the rights and be subject to all the liabilities, conditions and

obligations in and by said act, and the Acts Amendatory thereof, provided and imposed upon corporations formed thereunder." The Act of 1853, by Section 5, makes it the duty of all corporations organized thereunder to make a report, annually, in the month of July. Thus it will be seen that upon the enactment of the Act of 1867 it was contemplated and intended that corporations organized thereunder should file annual reports. I do not find that such corporations have subsequently been relieved by statute from such duty. The Act of 1853 was in 1877, by Act 113, repealed, in so far at least as it related to corporations organized for the purpose of mining, smelting and manufacturing iron, copper, silver, mineral coal, and other ores or metals. This repeal, however, would not, as I view it, affect your corporation as it existed by virtue of the Act of 1867, and the provisions of the Act of 1853 adopted by reference, which the Act of 1877 could not be treated as repealing.

The Act of 1893 (108), entitled "An act to provide a general law under which corporations may be formed to carry on institutions for the treatment of disease and for instruction therein and in hygiene," was undoubtedly designed as a revision of the laws providing for the incorporation of health institutions, and as such would ordinarily be construed as effecting a repeal of the Act of 1867. The Legislature in the later Act of 1897 (252), entitled "An Act to repeal obsolete and inoperative statutes," have treated the act as being in force, though non-effective, and in repealing its provisions have provided "that notwithstanding the repeal of the above mentioned acts, all rights of whatever nature, whether of incorporation, existence franchise, property or action now existing are expressly preserved, and the above mentioned acts for the enjoyment and enforcement of such rights shall be deemed to be still in force but for no other purpose whatsoever."

Respectfully,

HORACE M. OREN,
Attorney General.

INSURANCE LAW.—Re-insurance construed to be insurance within the meaning of the Laws of this State, companies desiring to re-insure fire and marine risks in this State, should be required to pay the specific tax imposed by Section 7257 of the Compiled Laws of 1897.

Lansing, February 7, 1902.

Hon. James V. Barry, Commissioner of Insurance, Capitol, Lansing, Michigan.

Dear Sir—Your letter of December 6, 1901, requesting my opinion upon whether re-insurance, so-called, is or is not insurance within the meaning of the Laws of this State, more especially the tax section of our law applying to Fire and Marine Insurance Companies, same being Section 7257 of the Compiled Laws of 1897, as amended. The companies referred to by you claim that they simply indemnify other regularly authorized insurance companies against loss, which is not an insurance business within the meaning of the law.

Section 7257, Compiled Laws of 1897, as amended by Act No. 118, Public Acts of 1899, provides in part as follows:

"Any fire insurance company, association or partnership incorporated by or organized under the laws of any other State, or any foreign government doing business within this State, shall, as a condition precedent to the renewal of an annual certificate by the Commissioner of Insurance, make and file in the office of the State Treasurer annually, in the month of January of each year, on oath or affirmation, a statement of the number of fire policies issued by its agents, and procured by or written for sub-agents, solicitors or brokers, upon property owned by residents of, or situate in the State of Michigan; also, a like statement of the marine insurance business transacted in the State of Michigan, and the gross amount of premiums received or secured thereon during the year then terminated; and shall pay into the hands of the State Treasurer a specific tax of three per cent on the gross amount of all premiums received in money or securities during the said year, and in ascertaining the gross amount of all premiums received or secured, the return premiums on canceled policies shall be deducted, and shall not be included in the term 'gross amount of premiums;' and such deductions shall not include any moneys paid by any company for reinsurance; which said specific tax may be recovered from any company neglecting or refusing to pay the same, in any court, at the suit of the State, etc."

The question to be determined appears to be this, is a foreign corporation which only attempts to make contracts of re-insurance on fire and marine risks in this State included in the term "fire insurance company, association or partnership," as used in Section 7257. Whether or not such corporation is a fire insurance company under this section would hinge upon whether re-insurance on fire and marine risks in this State is or is not insurance on such risks. A careful examination of the decisions discloses that they have proceeded upon the theory that re-insurance is insurance. Hone vs. Mutual Life Ins. Co., 1 Sand. N. Y. 137; Mutual Safety Ins. Co. vs. Hone, 2 N. Y. 235; New York Bowery Fire Ins. Co. vs. N. Y. Fire Ins. Co., 17 Wend. (N. Y.) 363; Philadelphia Ins. Co. vs. Washington Ins. Co., 23 Pa. St. 250; Johannes vs. Phoenix Ins. Co., of Brooklyn, N. Y., 66 Wis. 50; Phoenix Ins. Co. vs. Erie Transportation Co., 117 U. S. 317-23.

It seems generally to be the custom of insurance companies both to take re-insurance and re-insure. I am of the opinion that re-insurance, so called, is in fact, and should be held to be insurance.

I understand from your communication that the companies, while they are taking re-insurance on fire and insurance risks in this State, claim that this is not insurance, and that they are not fire or marine insurance companies, and therefore not liable to the tax imposed upon fire and marine insurance companies by Section 7257 as amended. In this connection I desire to refer to Sections 1 and 3 of Act 240, Public Acts of 1899, Section 1, provides:

"No person, association or corporation transacting fire or marine insurance business in this State, shall, directly or indirectly, contract for or effect reinsurance of any risk, in any company, corporation or association not licensed by the Commissioner of Insurance of this State to transact fire or marine insurance business therein."

Section 3 provides:

"Every person, company, corporation or association who shall violate any of the provisions of this act shall be liable to a fine of one hundred

dollars for every violation, to be sued for and recovered in the name of the people by the Attorney General, or Prosecuting Attorney of the proper county, either by action for debt or by criminal prosecution. And the Commissioner of Insurance shall cancel the license and revoke the authority of any fire or marine insurance company, person or association that shall violate any of the provisions of this act."

I am unable to find any section of our law permitting these companies to carry on their business in this State, if they are not in fact insurance companies.

I have reached the conclusion that re-insurance, so called, is in fact insurance; that the companies in question, if they desire to re-insure fire and marine risks in this State, should be required to pay the specific tax imposed by Section 7257, as amended.

Yours respectfully,

HORACE M. OREN,

Attorney General.

TAX LAW.—Taxpayer may pay one or more of the several taxes on any parcel or description of land, or any undivided share thereof.

Lansing, February 7, 1902.

Board of State Tax Commissioners, Lansing, Michigan.

Gentlemen—I am in receipt of your letter of the 3rd instant, enclosing letter of E. S. Black, City Attorney of Marine City, Michigan, requesting an opinion as to whether or not a taxpayer could pay any portion of taxes assessed and require a receipt therefor. In answer thereto I call your attention to Section 53 of the General Tax Law, viz.: Section 3876 of the Compiled Laws of 1897, as amended by Act No. 130 of the Public Acts of 1901. Prior to the passage of the above act any taxpayer could pay any portion of his taxes and require that the city or township treasurer as the case might be, execute a receipt therefor. An examination of this section, however, as amended by the above act, clearly shows that the Legislature has changed the law in that regard so as to require a taxpayer to pay at least one or more of the several taxes on any parcel or description of land, or on any undivided share thereof. In other words, he could pay the city or township tax, the county tax, State tax or school tax and receive a receipt for the particular tax paid, but could not pay a portion of any one of said taxes. The city or township treasurer as the case might be, would not be required to receive any payment not made in accordance with the provisions of this section as amended. I understand, however, that Marine City is operating under a special charter, which may contain some provision with respect to the payment of taxes which would change the general rule; otherwise the provision of the general tax law above referred to would govern.

Respectfully yours,

HORACE M. OREN,

Attorney General.

PUBLIC HEALTH.—Health officer knowingly violating the provisions of Section 4460 of the Compiled Laws of 1897, would be liable to the penalty provided for in Section 4461.

Lansing, February 14, 1902.

Henry B. Baker, M. D., Secretary, State Board of Health, Capitol Lansing, Michigan.

Dear Sir—I am in receipt of your letter of the 13th inst., in which you request my opinion upon whether or not a health officer is liable to the penalty imposed by Section 4461 of the Compiled Laws of 1897, for knowingly violating the provisions of Section 4460 of the Compiled Laws of 1897. In reply thereto would say that Section 4460 imposes certain duties upon the health officers of townships, cities and villages in this State, and only upon such health officers. Section 4461, provides that whoever shall knowingly violate the provisions of Section 4460 shall be deemed guilty of a misdemeanor, etc. As the duties are only imposed, by Section 4460, upon health officers, I am clearly of the opinion that health officers alone could violate the provisions of this section, and that if any health officer should knowingly violate the provisions of this section he would be liable to the penalty provided for in Section 4461.

Very respectfully,

HORACE M. OREN,
Attorney General.

BOARD OF EXAMINERS OF PLUMBERS.—Who to be members of, how appointed and compensation entitled to.

Lansing, February 20, 1902.

Leslie E. Clawson, City Attorney, Battle Creek, Michigan.

Dear Sir—I am in receipt of your letter of the 21st ult., in which you request my opinion upon the construction of Act 222 of the Public Acts of 1901; your particular questions being upon who should constitute the board of examiners of plumbers under said act. In reply thereto I desire to call your attention to that part of Section 1 of this act, which reads as follows:

"Within thirty days after this Act shall take effect, it shall be the duty of the local board of health, and if there be no local board of health, then it shall be the duty of the mayor of each of the cities of this State to appoint a board for the examination of plumbers, to examine, license and register plumbers and formulate rules and regulations therefor subject to the approval of such boards of health. Such board shall consist of five persons, of whom one shall be an employing or master plumber of not less than ten years' experience in the business of plumbing, and one shall be a journeyman plumber of like experience, and the other members of such board shall be the officers in charge of the plumbing and drainage department of the board of health of such city, and the chief engineer having

charge of sewers in such city, but in the event of there being no such officers in such city, then any other two officers having charge or supervision of the plumbing, drainage or sewerage, whom the mayor shall designate and appoint, or two members of the Board of Health of such city having like duties or acting in like capacities."

Sections 7 and 8 which read as follows:

"Sec. 7. Within thirty days after the organization of such examining board in any of the cities of this State, the local board of health, shall detail, designate and appoint for the purposes of this act and the enforcement of the provisions thereof and the work of inspecting the plumbing and drainage of buildings in said city, an inspector or inspectors of plumbing and drainage work connected therewith, subject however to the provisions or limitations of existing laws regulating the appointment of inspectors by such commissioner or commissioners, or board or department of health of such city. The terms of inspector or inspectors shall be subject to termination by the commissioner or commissioners, board or department of health of such city at any time. But all inspectors of plumbing so detailed, designated and appointed, and all inspectors shall not be engaged directly or indirectly in the business of plumbing during the period of their appointment, and they shall be citizens and actual residents of the city of which they are appointed. They shall be entitled to receive such compensation as shall be fixed by the board, commission or department making such appointment."

Sec. 8. The duties of the inspector or inspectors of plumbing appointed under the provisions of this act, shall be to inspect the construction and alteration of all plumbing and drainage work connected therewith performed in such city, and to report in writing the results of such inspection to the said commissioner of health, or the board of health, or the health department of their respective cities; they shall also report in like manner any person engaged in or carrying on the business, trade or calling of journeyman or master or employing plumber, without having the certificates hereinbefore provided."

It appears from Section 1 that the duty is imposed by the act upon the local board of health and if there be no local board of health, upon the mayor, to appoint the members of this board. This Section provides that the board shall consist of five persons, one of whom shall be an employing or master plumber of not less than ten years' experience, another shall be a journeyman plumber of like experience, and the other members of this board shall be the officers in charge of the plumbing and drainage department of the board of health of such city, and the chief engineer having charge of sewers in such city. The act then provides who shall be members of the board in case there be no officers in the city having charge of the plumbing and drainage department of the board of health. Section 2 of the act provides the compensation of the master and journeyman plumbers serving on the board. Section 7 provides that the local board of health of each city shall appoint an inspector, or inspectors of plumbing and drainage work. And Section 8 enumerates the duties of such inspector or inspectors. There is no provision in the above Sections making such inspector or inspectors, so appointed by the board of health, ex-officio members of the board for the examining of plumbers.

From the examination I have made of the above act I have reached the conclusion that the board for the examining of plumbers is to consist

of the five persons enumerated in Section 1 of the act, and that the inspectors provided for by Section 7 were not intended to be members of the board for the examining of plumbers.

Respectfully,

HORACE M. OREN,
Attorney General.

BOARD OF SUPERVISORS.—Have no authority by resolution or otherwise to relieve the County Treasurer or his bondsmen from their liability under the law, for money embezzled, without county having been reimbursed, and where the amount is not in dispute they would not have any authority to accept in full a lesser sum than the amount. If board fails to commence suit to recover the amount, they can be compelled to act by mandamus proceeding.

Lansing, February 20, 1902.

Virgil I. Hixson, Prosecuting Attorney, Manistique, Michigan.

Dear Sir—Your letter of January 25th received and contents noted. You state that Vernon P. Chappel, County Treasurer of Schoolcraft County for the years 1897-1901 inclusive, was at the last term of court convicted of embezzlement, and that his shortage as County Treasurer for the four years was $8,600. You also state that there is a persistent rumor abroad in the city that the Board of Supervisors will at a special meeting adopt a resolution relieving the sureties of his official bonds from liability and refuse to authorize suit. In this connection you submit for my consideration the following questions:

1. Has the Board of Supervisors authority to release the sureties on such official bonds without payment, or even to compromise for less than the full amount of the deficiency in the absence of dispute as to the amount?
2. Must the Prosecuting Attorney await authority from the Board of Supervisors before bringing suit on the bonds of the defaulting County Treasurer?
3. Can the Board of Supervisors be compelled by mandamus to authorize suit on such bonds, if their authorization is necessary to a valid suit?

Under Section 2535 of the Compiled Laws, the County Treasurer is required to give a bond to the Board of Supervisors of the County, conditioned that such person and his deputy and all persons employed in his office shall faithfully and properly execute their respective duties and trusts, and that such treasurer shall pay according to law all moneys which shall come to his hands as treasurer, and will render a just and true account thereof whenever required by the Board of Supervisors, or by any provision of law, and that he will deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers and other things pertaining or belonging to said office, etc.

In the case of Perley v. The County of Muskegon, 32 Mich. 131, it was held that the liability of a County Treasurer under the laws of this State was absolute, and that he must account for all moneys coming into his

hands. I quote from the opinion of the court, page 144, as follows: "There is not much difficulty in reaching the personal duty of the treasurer. He is bound to have money to pay liabilities as required to the full extent of his receipts, and he is bound when his term ends to have the balance ready to turn over to his successor. * * * He and his sureties are bound on their bond when any such failure occurs." I also call attention to the case of Bristol v. Johnson, 34 Mich., page 123, in which case it was held by the Supreme Court of this State that a statute providing for the raising of money by taxation to reimburse a township treasurer for a sum paid by him to the township to make good an amount of the public money of which he had been robbed, is held unconstitutional and void. It is immaterial what disposition was made of the County funds in the hands of the County Treasurer. His liability under the statute and under the ruling in Perley v. The County of Muskegon, is absolute, and if the Legislature could not authorize the raising of money by tax to reimburse such an official where the money had been accounted for or paid over to his successor, it would naturally follow that the Board of Supervisors would have no authority to relieve the County Treasurer from his liability under the law and thus accomplish indirectly what the Legislature by positive enactment could not do. The money embezzled by the County Treasurer belonged to the County and were public funds, and if the Board of Supervisors could relieve the County Treasurer and his bondsmen from accounting for this money, it would be necessary to raise just that much more by taxation to replenish the public funds of the County.

Bearing upon the question of the authority of the Board of Supervisors in the premises, I call attention to the case of Board of Supervisors v. Otis, 62 N. Y., page 88, and I quote from the opinion of the court commencing on page 92, as follows: "The sureties are not discharged from their obligation by reason of any neglect or omission of duty by the Board of Supervisors, or any unfaithfulness or even malfeasance on their part in their dealings with the principal in the bond. The condition of the bond is that the Treasurer shall pay according to law all moneys that shall come to his hands as such Treasurer, and shall render a full and true account thereof, etc. If this condition has been broken the bond is forfeited and the sureties are held notwithstanding the Board of Supervisors or other agents of the County, may have been wanting in the performance of some duty imposed upon them, or even negligent and careless in the performance of such duty. The Board of Supervisors and the County Treasurer were alike agents of the County as a body politic and corporate, and the acts and neglects of one agent cannot affect or detract from the liability of another agent, or of the sureties of either, to the common principal."

I also quote from the opinion of the court in County of Waseca v. Sheehan, 42 Minn., commencing on page 58: "The official bond of the County Treasurer is intended to secure the public from loss by reason of the official delinquency of that officer. For that purpose a bond is required. For that purpose it is to be deemed to have been given. The obligation of the sureties of the Treasurer is such as is declared in the condition of the bond. It is not contingent upon the integrity of other public officers, nor upon the faithful performance by them of their official duties. The sureties upon such a bond enjoy whatever protection there may be in the law imposing supervisory duties upon other public officers;

but there is no undertaking or guaranty on the part of the County or of the State in favor of such sureties, either express or implied, that the requirements of the law shall be complied with,—that public officers shall perform their prescribed duties; nor that they shall not be guilty of criminal malfeasance. There is no such condition affecting the contract expressed in the bond. Hart v. United States, 95 U. S. 316; Board of Supervisors v. Otis, 62 N. Y. 88. The distinction suggested by the appellants cannot be maintained,—that, although the mere negligence of the Board of County Commissioners in the discharge of their supervisory duties may not affect the liability of these sureties, yet actual criminal malfeasance on their part, facilitating or encouraging embezzlement or conversion by the Treasurer, has that effect. The County is not responsible to these sureties either for neglect or malfeasance on the part of its public officers. While this action is prosecuted in the name of the Board of County Commissioners, as all actions in behalf of a County must be, the action is not for the benefit of those officers, and the right of the County to enforce the contract of indemnity made for its benefit is not affected by the alleged neglect or wrongful conduct of those officers."

The language used by the court in the cases above cited is clearly applicable to the case which you present, and it is my opinion that the Board of Supervisors would have no authority by resolution or otherwise, to relieve the County Treasurer or his bondsmen from their liability to the County under the law, and where the amount of the County Treasurer's deficit is not in dispute they would have no authority to accept in full a lesser amount.

In answer to your second question would say that Section 2545 of the Compiled Laws of 1897 provides as follows: "Whenever the condition of a County Treasurer's bond shall be forfeited, to the knowledge of the Board of Supervisors of the County, they shall cause such bond to be put in suit." I am unable to find any provision of law that would auhorize the Prosecuting Attornev of a County to commence suit in favor of the County upon a County Treasurer's bond where the same had become forfeited, without being authorized so to do by the Board of Supervisors. The duty of the Board of Supervisors, however, under the law is plain, and it is my opinion that in case of failure to perform such duty the Board could be compelled to act by mandamus proceedings. This, I believe, fully covers your third question.

Respectfully yours,

HORACE M. OREN,
Attorney General.

SCHOOL LAW.—Contract entered into with a person not holding a legal certificate of qualification then authorizing such person to teach, is invalid and cannot be made the basis of a suit for the recovery of salary by the teacher. The subsequent procurement of a renewal certificate, dated back to a time prior to the date of the contract, will not serve to make such contract valid.

Lansing, February 20, 1902.

Ernest C. Smith, Prosecuting Attorney, Kalkaska, Michigan.

Dear Sir—I am in receipt of your letter of the 7th instant requesting my opinion as to the authority of the district board of a school district to draw an order for the salary of a teacher employed by said board under the following state of facts: A certificate was granted the teacher under subdivision first of Section 1832 of the Compiled Laws of 1897, which certificate expired by limitation in June, 1901. In October, 1901, a renewal of said certificate was applied for by the teacher, as provided in said section, the renewal being granted and bearing date as of June, 1901. Previous to the receipt by the teacher of the renewal certificate she had taught school about two months under contract with the school board. You ask whether or not the renewal from the State Normal School actually made in October, but dated the previous June, would operate to make the teacher a qualified teacher during the interim between the expiration of the original certificate and the receipt of the renewal certificate, and warrant the school district drawing an order for the salary of the teacher for the two months taught, from the public fund. You also ask whether the district by drawing such an order would thereby forfeit its right to primary school moneys?

In answer thereto would say that Section 4678 of the Compiled Laws, provides in part, that no contract with any person not holding a legal certificate of qualification then authorizing such person to teach, or with any member of the district board shall be valid, etc. The contract in question was entered into with a person not holding a legal certificate of qualification then authorizing her to teach, and is therefore invalid under the ruling of the Supreme Court in Bryan v. School District, 111 Mich. 67, and could not be made the basis of a recovery of salary by the teacher. See also Goose River Bank v. Willow Lake School Township, 1 N. D., 26; Hosmer v. School District, 4 N. D., 197; Jenness v. School District, 12 Minn., 448; Butler v. Haines, 79 Ind., 575. The fact that the renewal certificate was dated as of June, 1901, would not, in my opinion, operate to legalize the invalid contract made between the teacher and the district board. In Butler v. Haines, supra, it was held that the subsequent procurement of a certificate, and continuing to teach thereafter, did not entitle the party to recover his salary from the district; and in Jenness v. School District, supra, the contract was made on the 22d of the month, the school to commence on the 24th of the same month. The applicant had no certificate when the contract was made, but received his certificate on the 24th and taught the entire term. It was held that he could not recover. In Goose River Bank v. Willow Lake Township, supra, it was held that where a contract is expressly prohibited or declared void by statute, retention of the fruits of such contract will not subject a municipality to liability under the contract or on a quantum meruit.

A positive prohibition is also found in Section 4676 of the Compiled Laws, which provides in part that no part of the primary school interest fund moneys, or moneys received from the one mill tax shall be paid to any teacher who shall not have received a certificate of qualification from the proper legal authority *before the commencement of his school.*

In view of these provisions of the statute and decisions of the courts it is difficult to see how money could be lawfully appropriated for the payment of the salary of the teacher in question. However, the teacher now holding a legal certificate of qualification, a valid contract could undoubtedly be entered into with the school board.

I am unable to find any provision of the statute which would operate to make the payment of salary under an invalid contract a ground for forfeiture by the district of its right to the primary school moneys.

Yours respectfully,

HORACE M. OREN,
Attorney General.

ELECTION LAW.—The provisions of the general election law relative to numbering and perforating ballots applicable to village elections. The perforated corner of the ballot containing the number, after being detached from the ballot by the inspector, may be cast aside.

Lansing, February 20, 1902.

Byron N. Seaman, Village Clerk, Romeo, Michigan.

Dear Sir—Your letter of the 17th instant received. In answer thereto would say that Act No. 214 of the Public Acts of 1901 is an amendment to the General Election Law of this State. By Act No. 194 of the Public Acts of 1891, and Section 7 of Chapter 3 of the Act for the Incorporation of Villages in this State, all elections held in villages are required to be in conformity with the provisions of the laws governing general elections so far as the same shall be applicable thereto. The provisions of the Act of 1901 relative to numbering and perforating ballots would therefore apply to village elections. The object of that provision of the statute being to enable the inspectors of the election to ascertain whether the ballot voted by the elector corresponds with the one delivered to him by the inspectors, as soon as that fact is determined the perforated corner of the ballot containing the number has served its purpose and on being torn off by the inspector could be cast aside.

Yours respectfully,

HORACE M. OREN,
Attorney General.

ELECTION LAW.—The provisions of Act 214 of the Public Acts of 1901, relative to numbering and perforating of ballots, applicable to village elections.

Lansing, February 20, 1902.

A. W. Blakeslee, Village Clerk, Morrice, Michigan.

Dear Sir—I am in receipt of your letter of the 13th instant requesting my opinion as to whether or not the provisions of Act No. 214 of the Public Acts of 1901, and particularly that part of said act which relates to the numbering and perforating of ballots, are applicable to village elections.

In answer thereto I would say that the act in question is an amendment to Section 14 of the General Election Law of this State. Act No. 194 of the Public Acts of 1891, being an act to prescribe the manner of conducting municipal and township elections and to prevent fraud and deception thereat, provides in Section 1 as follows:

"That all elections hereafter held in the various cities, villages and townships in this State, shall be in conformity with the provisions of the laws governing general elections so far as the same shall be applicable thereto, and all the provisions of such laws relative to the Boards of Election Inspectors' the arrangement of polling places, the manner of voting and receiving votes and the canvass and declaration of the result of such election, are hereby made applicable to such municipal and township elections, but the time for the opening and closing of polls shall not be affected thereby."

Section 7 of Chapter 3 of the act for the Incorporation of Villages in this State also provides that all elections in said villages shall be conducted as nearly as may be in the manner provided by law for holding general elections in the State, except as otherwise provided in said act.

Act 214 of the Public Acts of 1901 being a part of the law governing general elections, its provisions are therefore applicable to village elections under the statutes above referred to. It follows that at those elections the ballots should be numbered and perforated in conformity with the provisions of the Act of 1901.

Respectfully,
HORACE M. OREN,
Attorney General.

INSURANCE LAW.—Construction of word "person;" when used in a statute it embraces not only natural persons but also artificial persons, such as private corporations.

Lansing, February 25, 1902.

Hon. James V. Barry, Commissioner of Insurance, Capitol.

Dear Sir—I am in receipt of your letter of the 21st instant, in which you enclose a copy of an act passed by the Legislature of 1901, entitled

"An act to require the procuring of certificates of authority in this State by all agents of insurance companies doing business within this State." and in which letter you call my attention to the word "person" found in the first line of Section 1, and ask if this term may be so construed as to make it apply to firms or corporations. In this connection I desire to call your attention to the general rule laid down by Black on Interpretation of Laws, page 138, as follows: "The word 'person' is a general or generic term. Hence when used in a statute it embraces not only natural persons but also artificial persons, such as private corporations, unless the context indicates that it was used in a more limited sense, or the subject-matter of the act leads to a different conclusion; that is to say, it applies to corporations in all circumstances where it can reasonably and logically so apply."

The language of the act in question fails to indicate that the term "person" as found in Section 1 of said act, was used in a limited sense, and this act in that particular would therefore apply to private corporations when it can reasonably and logically be so applied, and the same would be true with respect to firms or copartnerships.

Respectfully yours,

HORACE M. OREN,
Attorney General.

BOARD OF STATE AUDITORS.—Has authority to audit the account of Judge of Probate in the matter of a criminal insane person, under the provisions of Section 1982 of the Compiled Laws of 1897.

Lansing, February 26, 1902.

The Honorable Board of State Auditors, Capitol, Lansing, Michigan.

Gentlemen—Your communication of the 20th instant, enclosing bill in duplicate of William O. Webster, Judge of Probate of Ionia County, for fees amounting to $11.70 in the matter of Charles Murphy, a criminal insane person, and requesting my opinion as to the authority of your honorable board to audit the account, duly received.

In answer thereto would say that the proceedings before the Judge of Probate appear to have been taken under the provisions of Section 1982 of the Compiled Laws of 1897, which in part provides that in case the insanity of any criminal patient confined in the Asylum for Dangerous and Criminal Insane shall continue after the expiration of his or her sentence the Medical Superintendent shall make application to the Judge of Probate for an order to retain such person in the asylum until he or she is restored to reason. After a hearing on said application is had, if the Judge of Probate shall certify that satisfactory proof has been adduced showing the person examined to be insane, he is authorized to direct his retention in said asylum until restored to soundness of mind, the expense of the maintenance of such patient to be charged in accordance with the provisions of Section 1975 of the Compiled Laws.

Your authority for auditing the expenses of such proceedings is found in that part of said Section 1982 which provides as follows: "Said

Probate Judge shall report the result of his proceedings to the Board of State Auditors, whose duty it shall be to audit and allow the expenses of such proceedings, to be paid by the State Treasurer on the warrant of the Auditor General."

You also call attention to the fact that the order of the Probate Judge directing the retention of the said Charles Murphy in said asylum provides that the expense of his support and maintenance therein should be borne by the County of Midland; but in my judgment this would not alter the situation, as the intent of the Legislature seems to have been that the expenses incurred in proceedings of this character should be audited by your honorable board, whether the patient was retained in the asylum as a State or a county patient.

Respectfully,
HORACE M. OREN,
Attorney General.

INHERITANCE TAX LAW.—PERSONAL PROPERTY.—A legacy of personal property, given to a church society, is exempt from the payment of an inheritance tax.

Lansing, March 22, 1902.

Hon. Edgar O. Durfee, Judge of Probate, Detroit, Michigan.

Dear Sir—Your favors of the 14th ultimo, and the 4th inst., referring to and requesting my opinion upon whether a legacy of personal property, given to a church society, would be exempt from the payment of an inheritance tax, under the provisions of Act 188 of the Public Acts of 1899, at hand and have received due consideration, the result of which is as follows:

The Inheritance Tax Law, in Section 1, imposes a tax upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, passing to persons or corporations *not exempt by law from taxation on real or personal property.* If the person or corporation receiving a devise or bequest of real or personal property is exempt, by any law of this State, from taxation on its real property, it would not be required to pay a tax under the inheritance tax law upon the transfer to it of real property, or if it was exempt from taxation upon its personal property under any law of the State, it would likewise be permitted to claim that exemption under the inheritance tax law.

The language of Section 1 is somewhat ambiguous, and might admit of a construction which would exempt the corporation from all inheritance taxes, whether upon the transfer to it of real or personal property, where such corporation was exempt from taxation upon either its real or personal property. As to whether it would have that effect, it is, however, not necessary here to decide, as church corporations seem to be exempt upon both their real and personal property.

The question for our consideration becomes, is a church or religious corporation exempt from taxation upon its personal property? If it is, under what has been said, the necessary conclusion is reached that it is

likewise exempt (upon transfers of personalty to it), from taxation under the Inheritance Tax Law.

Section 9 of the General Tax Law, under the head of "Personal Property Exempted," specifies that "The following personal property shall be exempted from taxation, to wit:

"*First.* The personal property of benevolent, *charitable,* educational and scientific institutions, incorporated under the laws of this State." If the personal property of a religious corporation or ecclesiastical body can claim an exemption from taxation, it must be under this section, and therefore, if such a corporation falls within any of the several terms of "benevolent," "charitable," "educational," or "scientific" institutions, and is incorporated under the laws of this State, it is entitled to exemption of its personal property.

That a religious corporation is engaged in a charitable work and can be regarded as a charitable institution would seem to be unquestionable. The view that churches and religious bodies are engaged in a charitable work was taken by our Supreme Court in the case of Allen v. Duffie, 43 Mich. 1, where it was said: "It was never doubted, so far as we know, that all the necessary or usual work connected with religious work was work of *charity.* If it were not so, the minister who preaches, the organist and precentor who furnish the music, and the sexton who cares for the building on Sunday, would be violating the law every day they performed service for their religious society, and not only would be precluded from recovering compensation, but might be punished for services which are proper in themselves, and for which the day is specially set apart. But *their work* is not illegal, because it *is in a true sense, and indeed in the very highest sense, charitable.* Religious societies are formed to do good to mankind." (43 Mich. 7.)

The courts of other States have reached the conclusion that a church is a charitable institution. Grissom v. Hill, 17 Ark. 483, 488; Swasey v. American Bible Society, 57 Me. 523; Bartlett, petitioner, 163 Mass. 509; Morville v. Fowle, 144 Mass. 109; Jones v. Habershaw, 107 U. S. 174; Trustees v. Beatty, 28 N. J. Eq. 570.

We might stop here, with the conclusion that, a church society being a charitable institution, its personal property is exempt from taxation, were it not for the peculiar language of the statute relating to the exemption of churches from taxation upon their real estate, and the bearing which those provisions might have upon the intention of the Legislature, as expressed in the provisions above quoted in regard to exemption from taxes upon personal property. Section 7 of the General Tax Law, makes provision that, "The following real property shall be exempt from taxation: * * *

4. Such real estate as shall be owned and occupied by library, benevolent, *charitable,* educational and scientific institutions, incorporated under the laws of this State, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated * * *

5. All houses of public worship, with the land on which they stand, the furniture therein, and all rights in the pews, and also any parsonage owned by any religious society of this State and occupied as such."

Clause 4, above quoted, is as broad and comprehensive in its provisions as the clause of Section 9, which relates to the exemption of personal property, and standing alone it would be sufficient to exempt a church

corporation from taxation upon its real estate; but the Legislature, instead of permitting that section to determine the exemption from taxation upon real estate of religious corporations, made specific provision in Clause 5, (above quoted) of the section, which limits and restricts the exemption to the houses of worship, the land on which they stand, the furniture therein, the rights in the pews, and the parsonage. By thus making specific provision as to the exemption of church property, was it intended that the expression and designation, in the statute of certain property to be exempted was to be exclusive, and that no other church property, whether real or personal, was to be exempt? I am inclined to think not; but that the inclusion of Clause 5 was simply intended to limit the general terms of Clause 4, of Section 7, to the real estate designated therein, and that it was not intended to determine the exemptions from personal property, other than as therein expressly stated, or that the only exemption from taxation which religious corporations should have was that designated in Clause 5 of Section 7, but that such corporations are entitled to exemption from taxation upon their personal property under the provisions of Clause first, of Section 9, of the General Tax Law, and are, therefore, exempt from taxation under the Inheritance Tax Law, upon transfers of personal property to them.

Respectfully,

HORACE M. OREN,
Attorney General.

PLUMBING AND DRAINAGE LAW.—How board to be constituted; when mayor may appoint member of; no provision in the law for licensing those who have mastered only some branches of the trade; if applicant is unable to make satisfactory proof of having engaged in the business of plumbing for the prescribed time, or if it should appear that he had mastered only a part of such trade, the board would be justified in demanding he pass a satisfactory examination before issuing a license to him.

Lansing, April 5, 1902.

Mr. Leslie E. Clawson, City Attorney, Battle Creek, Michigan.

Dear Sir—Your communication of the 20th instant, requesting a construction of certain provisions of Act No. 222 of the Public Acts of 1901, entitled "An act relating to plumbing and drainage, and providing for the inspection thereof, and for the examination, regulation, licensing and registration of plumbers and for the punishment of offenders against this act," duly received and contents noted. The questions you submit are as follows:

1. "It is disputed as to who are meant by 'The officers in charge of the plumbing and drainage department of such cities,' as occurring about one-fifth of the way from the beginning of Section 1, and a similar one found near the end of the same section, which reads, 'Such officer in charge of the plumbing and drainage department.'"

2. "Are these officers to be designated by resolution of the Board of Health, in the same way as the plumbing members of the Board of Exam-

iners of Plumbers? Must they be the officers actually controlling the every day working of the plumbing and drainage department of the Board of Health, or can there be an arbitrary designation of members of the Board of Health or of others not members of the same?"

3. "Can a man be legally licensed who lacks some or many of the qualifications for a journeyman or master plumber, in order that he may be able to do all kinds of water-works and sewerage plumbing? Persons have asked for license who did not even claim to have many of the qualifications named. Most of these parties desire to do work in the lines that they are familiar with, but some want to work in all lines. I will mention a few of the cases that have come to our notice: First, those who can run water pipes only, and some of these can do no more than the very simplest of such jobs. Second, those who can run lines of cast iron sewer pipe, but cannot do the necessary lead pipe work, set water closets, bath tubs, etc. Third, those who can do water piping, cast iron sewer piping, set up water closets, wash bowls, etc., but cannot wipe lead pipe joints or do much of the necessary work in lead."

4. "Must a plumber desiring to obtain a license without passing an examination, as provided in Section 5, be qualified for all kinds of sewer and water-works plumbing to the satisfaction of the examining board, or can he, by making oath, to two years' work as a master or journeyman plumber, be legally entitled to a license, although the examining board is not fully satisfied with his ability, and he may come under one of the three heads given in the last question?"

You also state: "We have applications from five to ten parties who have attempted to pass that examination that we propose to give to those subject to examination and are not able to pass at the required percentage. These parties have been doing work of some kind for from two to ten years, connected with the plumbing trade, but most of them have only mastered a portion of the business of sewer and water plumbing, and are included under the three heads that I have heretofore mentioned, or others very similar. The main point to be reached in this matter is whether the examining board can cause these parties to submit to an examination, if not fully satisfied as to their ability, no matter what are the other conditions surrounding the case."

The board for the examination of plumbers provided for in the act above referred to consists of five members appointed by the local board of Health, or if there be no local Board of Health then to be appointed by the mayor of the city. One of the members of said board is required to be an employing or master plumber of not less than ten years' experience in the business of plumbing, one a journeyman plumber of like experience, the chief engineer having charge of the sewers in the city, and the officers in charge of the plumbing and drainage department of the Board of Health of the city, and if there be no such officers in the city, then any other two officers having charge or supervision of the plumbing, drainage or sewerage whom the mayor shall designate and appoint, or two members of the Board of Health of such city having like duties or acting in like capacities.

In answer to your first and second questions I would say that in my opinion it was intended that two members of the Board of Examiners of Plumbers should be selected from the members of the Board of Health, if there be a Board of Health of the city, and that in no case would the power of appointing the two officers to have charge of the supervision of

the plumbing, drainage or sewerage in the city, be vested in the mayor, except where there is no Board of Health in the city. The two members of the Board of Health selected should be those in charge of the plumbing and drainage department of said board; if there be no members of the Board of Health in charge of that department, then two members of said board should be designated to act in that capacity, and in such case the designation could be arbitrary. The members so designated, together with the master or employing plumber, the journeyman plumber, and the chief engineer having charge of the sewers of the city, as provided in said act, would constitute the Board of Examiners of Plumbers.

Answering your third question, would say that the act in question provides for the issuing of licenses to those who pass a satisfactory examination before said board as to their qualifications as journeymen, master or employing plumbers, or inspectors of plumbing. The law makes no provision for licensing those who have mastered only some branches of the trade, business or calling of a journeyman or master plumber, and in my opinion licenses should only be issued to those who pass a satisfactory examination in all branches of work connected therewith.

In answer to your fourth question, would say, that Section 5 of the act provides in part that every person who has been engaged for a period of two years or more in the trade, business or calling of journeyman, master or employing plumber in this State, upon satisfactory proof made before said board of the truth thereof, etc., and upon the payment of the sum of two dollars, shall be entitled to receive a license from said board without examination. If the applicant for a license under this section was unable to make satisfactory proof of having been engaged in the business or calling of a journeyman, master or employing plumber for the prescribed time, or if it should appear that he had mastered a part only of such trade, business or calling, in my opinion the board would be justified in demanding that he pass a satisfactory examination before issuing a license to him.

Yours respectfully,
HORACE M. OREN,
Attorney General.

CLAIM OF DECEASED COUNTY AGENT AGAINST THE STATE.—Compensation, agent is entitled to, based upon number of cases investigated, and not to exceed certain amount each year. Board of State Auditors have authority to allow such claims of county agent, if presented in person or by his administrator. Statute of Limitations does not run against such claims.

Lansing, April 5, 1902.

Board of State Auditors, Capitol, Lansing.

Gentlemen—I have before me yours of the 20th inst., requesting my opinion upon a number of questions regarding the claim of John Hosmer, deceased, presented to you by Hon. George S. Hosmer, administrator, for services and expenses as county agent of the State Board of

Corrections and Charities for the County of Wayne, from 1891 to 1901, inclusive. The questions presented are as follows:

1. If Mr. Hosmer appeared before the Police Court in a number of cases on Monday, could he also make an additional charge for making investigations in those cases?

2. Is the amount limited to Wayne County for investigations, in effect, an appropriation, and required to be accounted for according to the general accounting laws of this State? And if so, the bills not having been so presented, has the Board authority to allow them?

3. Does the statute of limitations affect these claims?

4. Does the administrator, in presenting these bills, stand in the same position as if they had been presented by the principal?

5. Is the fact, that the principal did not present bills for a period of ten years, even after the appointment of his successor in December 1900, such evidence of his intention to contribute his services as would require the administrator to prove that he did not so intend?

In regard to the first question presented, I would say that the statute provides that, "Said agent shall receive as compensation for his services under this act, his necessary official expenses, together with the sum of three dollars in full for his services for each case investigated or visited and reported upon, as hereinafter provided, but not exceeding three dollars for any one day's service, which shall be audited by the Board of State Auditors, and paid from the general fund" (2260 C. L.). The law also requires that when complaint is made and pending against any boy under the age of sixteen years or girl under the age of seventeen years for the commission of any offense not punishable by law with imprisonment for life, the court or magistrate shall at once give notice of the pendency of said complaint to the county agent, "who shall have an opportunity allowed him to investigate the charge or charges, and upon receiving such notice the agent shall immediately proceed to inquire into and make a full examination of the parentage and surroundings of the child, and of all the facts and circumstances of the case, and report the same to the court or magistrate, who shall advise and counsel with the said agent;" (2261, C. L.). Under these provisions of the statute it will be seen that the compensation of the county agent is not fixed or given for attending the sessions of the Police Court, but is given "for each case investigated or visited and reported upon," and that the appearance in the Police Court is merely the completion of, or final action in regard to, cases which he has investigated. Thus, the amount of the compensation of the county agent, under Section 2260, C. L. is not measured by the number of days which he appeared in court, but is measured by the number of cases investigated or visited and reported upon, provided that the charges shall not exceed three dollars per day and shall not, in Wayne County, prior to 1895, exceed an aggregate of two hundred dollars, and since 1895, an aggregate of three hundred dollars per year. Under what has been said, the compensation for services depends upon the number of cases investigated and the number of days' service performed, which are questions of fact, open to the inquiry and subject to the determination of the Board of State Auditors. It will be noticed that Section 2261, C. L. contains a specific provision for compensation in cases of conveyance to a State institution to which a child has been sent by the court (which seems to be in addition to that fixed by Section 2260), as follows: "The child shall be placed in

charge of the agent, or some person designated by him, to be conveyed under his direction to the institution, for which service the same fees shall be allowed as are paid to sheriffs in like cases."

As to the second question presented, I would say that I do not think the amount limited to Wayne County for investigations, etc., was or is, in fact, a specific appropriation, the unexpended balance of which is required to be covered into the treasury at the close of the year in accordance with the general accounting laws, if not used in payment of the claims of county agents. It will be noticed that the statute providing for the auditing of this compensation by the Board of State Auditors makes no specific appropriation. It simply requires that the per diem and expenses, as audited by that board, shall be paid from the general fund, and limits the amount to be used in Wayne County to the sum of two hundred or three hundred dollars per annum, as the case may be. When bills for services and expenses are presented and allowed by the Board of State Auditors, the general provision found in Section 127 of the Compiled Laws of 1897, making appropriations for claims allowed by the Board of State Auditors, comes into operation and automatically makes the appropriation. The appropriation is the amount which the Board of State Auditors allows, and not the three hundred dollars limited by the statute. The Board of State Auditors would, therefore, have as full authority to allow these claims now as it would had they been presented within the year in which they were created, if they have not been barred by the statute of limitations, and the same, when audited, should be paid from the general fund.

For answer to your third question, as to whether the statute of limitations affects these claims, I would say that the only general statutes of limitations which we have in this State are those found in Chapters 267 and 268 of the Compiled Laws of 1897, under the title of "Limitation of Actions." These limitations prohibit the bringing of actions, unless instituted within certain periods, therein stated, and the question for consideration is whether they would apply to the case of a claim against the State and presented to the Board of State Auditors. that the State cannot be sued is fundamental, and the Board of State Auditors has been created as a body to afford claimants an opportunity to assert and prove their rights against the State, and to receive payment or satisfaction thereof. The presentation to the Board of State Auditors, it is true, partakes slightly of the nature of a suit, but it does not seem to me that the statute of limitations prohibiting the bringing of action unless instituted within specified times, was intended to apply to claims presented to the Board of State Auditors, and that those claims are not barred in the absence of a specific statute fixing a limitation upon the time in which a claim shall be presented to that body for audit or allowance. Where such a statute exists it is, of course, conclusive upon the authority of the Board. Where it does not exist, the Board is warranted in auditing and allowing any claim which has been presented with reasonable diligence. In this case, ten years have elapsed since the accrual of a part of the items of the claim. I do not think, however, that this fact would impute such laches to the claimant as would bar his claim or any part of it, if he is in a position to satisfy the Board of Auditors that the services, for which compensation is claimed, were actually rendered and that compensation therefor has not been received. The lapse of time, however, will not excuse as full

and complete proof as could have been required had the bill been presented contemporaneously with the rendering of the service.

As to whether the administrator, in presenting these bills, stands in the same position as the decedent, I would say that I am inclined to think that he does. The decedent would have been entitled to present the same were he alive,—they constitute the assets of his estate, and it is the duty of the administrator to realize upon them.

Upon the last question presented, as to whether the fact that decedent never attempted to collect the claims in question would constitute such evidence of intention to contribute the same as would require the administrator to prove the contrary, I would say that the intention to make a gift of this character should be clear and explicit. The rule is, that gifts are revocable until acceptance or delivery. In this case there was no acceptance or delivery, nor was there any authority on the part of any State officer to make acceptance in behalf of the State, had the gift been actually tendered, which it was not. Under such circumstances, it is most apparent that the State has no right to claim a gift by Mr. Hosmer of his claim against the State. Even though he had actually expressed his intention to donate the same, it would, in the absence of delivery and acceptance, constitute no bar to his subsequently presenting his claim, and the mere intention to make a gift, without any act in consummation of that intention, could create no rights and would not operate as a defence to the claims in question when presented by the administrator of the decedent county agent's estate.

Respectfully,

HORACE M. OREN,
Attorney General.

TAXATION.—Shares of stock in foreign corporation, owned by residents of this State are not subject to taxation, if the real and personal property of said corporation is situated and taxed in this State.

Lansing, April 16, 1902.

Board of State Tax Commissioners, Lansing, Michigan.

Gentlemen—Your favor of the 10th inst., stating that the Page Woven Wire Fence Company is a foreign corporation owning a large amount of real and personal property in Pennsylvania, and also a large amount of such property in this State, upon which it is assessed and pays taxes, and that a large amount of its stock is owned in Adrian and other portions of Lenawee County, and requesting an opinion as to how the stock of this company should be valued for assessment purposes, received and contents noted.

Answering thereto I would say that the question of taxation of the stock in a foreign corporation, held by residents of this State, and of the method of arriving at its value for the purposes of taxation, may arise in two classes of cases.

1. Where the corporation is taxed on its property or capital stock in the State of its existence. A question of this character came before

the Supreme Court in the case of Bacon v. Board of State Tax Commissioners, 85 N. W. 307, and it was held that the taxation of the shares of a foreign corporation in this State, when it was taxed for the full amount of its property in the State of its existence, did not constitute objectionable, double taxation; and,

2. Where a part of the property of the foreign corporation is situated within this State, and it is taxed thereon. It is the case of this latter class which concerns us. The foreign corporation in question owns a large amount of real and personal property in this State, upon which it pays taxes; a large amount of stock is held here, and the question for consideration is, whether the taxation of the shares of such company held within this State at their full value, in addition to the taxation of the property, is permitted or required by statute; and if so permitted or required, is the statute objectionable, as providing for such double taxation as to violate the rule of uniformity laid down in the constitution?

Section 8 of the general tax law provides that "For the purposes of taxation, personal property shall include: * * * All shares in corporations organized under the laws of this State, when the property of such corporation is not exempt, or is not taxable to itself; or when the personal property is not taxed; * * * All shares in foreign corporations, except national banks, owned by citizens of this State." Under the provisions of this statute, the stockholders of a domestic corporation, which is taxed upon its property, are not taxable upon the shares held by them. As to foreign corporations, however, the statute makes no distinction between that corporation which is taxed upon its property within or without this State, and that corporation which pays no taxes on its property. In either of these classes of foreign corporations, the literal language of the statute subjects the shares held by citizens of this State to taxation, whether the property of the corporation is taxable or not.

Where the property of a corporation is situate and taxable in another State, as has been said, objectionable, duplicate taxation does not result. Where, however, the property of the corporation is situate in this State and is here taxed, it would seem that duplicate taxation does result, if the shares of the personal and real property of a corporation are representatives of each other. Upon this question, Long, J., in the case of Bacon v. Board of State Tax Commissioners, said "One owning shares in a corporation is substantially the owner of an aliquot part of the property of the corporation, although the legal title to such property is vested in the corporation and not in him. The value of his shares can never vary greatly from the value of the property they represent. This is as true of shares of stock in foreign corporations as in those of domestic corporations:" (85 N. W. 308.) Insurance Company v. Assessors, 95 Mich. 466.

As to the permissibility of taxation of this character, it is said by Judge Cooley, in his work on Taxation: "It is a fundamental maxim in taxation, that the same property shall not be subject to a double tax, payable by the same party, either directly or indirectly." (2 Ed. 227.)

In speaking of the constitutional provision regarding a uniform rule of taxation, Champlin J., in the case of Attorney General v. Supervisors, says: "The rule of uniformity forbids that taxation should be double. No person can be twice assessed upon the cash value of the same property, to defray a public burden." (71 Mich. 26.) In the same

case, Campbell J., uses the following language: "It cannot be possible to have a double taxation valid under our constitution." (33.)

In a measure decisive of whether objectionable, duplicate taxation would result in taxing the property of the foreign corporations in question, and at the same time taxing the shares of its stock held in this State, is the case of Insurance Company v. Assessors (5 Mich. 466.) There, the tax law of 1891 provided for the assessment, as personal property, of all shares in banks organized in this State, at their cash value, after deducting the value of the real estate taxed to the bank; it also provided, that in computing the taxable value of the property of insurance companies, the value of the real estate upon which the company paid taxes should be deducted from its net assets above liabilities, and the remainder should be the amount upon which the company would be taxed. This law came before the Supreme Court in the case of Common Council v. Board of Assessors (91 Mich. 78), where it was held, that real estate mortgages were, under its provisions, to be treated and regarded as real estate, and that banks and insurance companies were entitled to have mortgages held by them deducted, in arriving at the value of their shares or taxable property. In 1893 an act was passed, providing that no such deduction should be made for real estate mortgages owned by banks or insurance companies. This late statute was questioned as unconstitutional, the claim being made that it violated the constitutional provision requiring an uniform rule of taxation; and it was held, by reason of subjecting the same property to taxation twice, once as real estate, and once as shares of stock, in the case of banks, or as taxable assets in the case of insurance companies, the act was unconstitutional; the court saying: "That this is a violation of the rule of uniformity of taxation, it needs no argument to demonstrate."

As, under what has been said, both the shares of stock and property of the corporation in question cannot be subjected to taxation in this State, at the same time, unless in reaching the value of those shares of stock, a deduction be made of the property upon which taxes are paid within this State, the statutory provision providing for the taxation of shares in foreign corporations must, therefore, be construed so as to effect a constitutional rule of taxation, and unless it can be so construed, it would be unconstitutional to the extent that it requires, or permits, duplicate taxation, and thereby violates the constitutional rule of uniformity. In reaching the value of the shares of stock of the Page Woven Wire Fence Company, held in this State, for the purpose of taxation, allowance must be made for the value of the property upon which that company pays taxes in this State.

A number of well considered cases apply a rule in opposition to that above laid down. Among them being, Bradley v. Bauder, 30 Ohio St. 26; Lee v. Sturges, 46 Ohio St. 153; Carter v. Sturges, 114 U. S. 511. In these cases, similar questions to the one which we are now considering were presented in the State of Ohio. Certain foreign corporations owned property in that State, upon which they paid taxes there, although the bulk of their property was situated and taxed in other states. A number of the shares of the stock of these corporations were held in Ohio, and were placed upon the duplicate and subjected to taxation. The taxation was objected to for the reason, among others, that the constitutional rule of uniformity (the constitution of that State re-

quiring property to be assessed according to a uniform rule) was violated, and that the tax imposed subjected the owners of the shares to double taxation. Both the Supreme Court of Ohio and of the United States held that such taxation was not objectionable, and that duplicate taxation did not result. The decision being based, practically, on the ground that the shares of stock and the capital stock, or property of the corporation, constituted two distinct species of property, although the same, in a sense, represented and depended for their value upon each other. The Supreme Court, in the case of Sturges v. Carter, said, "It may be conceded that generally the capital or the capital stock of a corporation is its property. Bank Tax Case, 2 Wall. 200; National Bank v. Commonwealth, 9 Wall. 353. But the shares held by the stockholders are distinct from the capital stock of the corporation, and the taxation of both is not necessarily double taxation. Farrington v. Tennessee, 95 U. S. 679; Dewing v. Perdicaries, 96 U. S. 193." (114 U. S. 521.)

A different rule being laid down by our Supreme Court than is laid down by the Federal Court and the Supreme Court of the State of Ohio in the above cases, renders it necessary for me to follow the rule mapped out by our court, leading to the conclusion above stated.

Respectfully,

HORACE M. OREN,
Attorney General.

BOARD OF STATE AUDITORS.—Have power to audit bill of County Treasurer for the collection of the Inheritance Tax, under Act 188 of Public Acts of 1899.

Lansing, April 16, 1902.

Board of State Auditors, Capitol, Lansing.

Gentlemen—Your favor of March 28th, enclosing bill of Chas. A. Buhrer, Treasurer of Wayne County, for $1,582.27 for fees in connection with the collection of the inheritance tax, under Act 188 of the Public Acts of 1899, for the year 1901, and requesting my opinion as to your authority to audit and pay the same, and also asking whether there are any other officers who could claim compensation for services under said act, duly received and contents noted.

Answering thereto I would say that said Act 188 of the Public Acts of 1899, makes provision for the taxation of inheritances, transfers of property by will, by the intestate laws of the State, and otherwise. And in Section 16 contains the provision: "The treasurer of each county shall be allowed to retain on all taxes paid and accounted for by him each year, under this act, one per centum. Such fees shall be in addition to the fees now allowed by law to such officers." The act also provided for the appointment of appraisers to determine the true cash value of the property, the transfer of which is taxable, to be compensated for their services out of the moneys arising from the tax, and for subpoenaing, and attendance of witnesses, whose fees were required to be paid from the proceeds of the tax collected; and also, in certain instances,

for the employment of attorneys, who were to be compensated in a like manner.

Soon after its enactment the validity of Act 188 was contested and was, with the exception of certain provisions, sustained, in the case of Union Trust Company v. Wayne Probate Judge, 125 Mich. 487. Among the objections to its constitutionality was, that the act required the expense of the collection of the tax to be deducted from the tax collected, and in answering the objection three theories were presented in behalf of the State.

1. That the constitutional provision, requiring specific taxes to be paid into the primary school fund, referred only to the net proceeds of the tax, after the deduction of the expense of collection, and not to the gross amount received.

2. That inasmuch as the act provided for the collection of certain interest and penalties, it must be assumed that it was the intention of the Legislature that the proceeds of such interest and penalties were to be appropriated to the payment of the expenses of the collection of the tax, and thus the act be held constitutional as an entirety; and

3. That even though the provision requiring the payment of the expense of collection from the tax collected should be held to be unconstitutional, the validity of the act would not be affected thereby, and upon this proposition the following language will be found in the brief filed by me, as Attorney General, on behalf of the State.

In this case after eliminating the provisions relating to the payment of fees and expenses incident upon collection of the tax, sufficient remains to give the act full and complete operation. The Board of State Auditors has constitutional and statutory authority to audit and allow all claims of every character against the State, and the expenses incident upon the collection of this tax would unquestionably be claims against the State of such a character that the Board of State Auditors might allow the same. If the Legislature had, in this act, included a provision to the effect that the Board of State Auditors should allow all claims arising thereunder for collection of the tax, no one would question its validity on that account. The authority conferred upon the Board of State Auditors to audit and examine claims is as much applicable to the expenses incurred in the collection of this tax, as if a provision to that effect had been included in Act No. 188, and the effect after eliminating the provisions in regard to payment of the expenses of collection, if unconstitutional, is identical with the result which would have been obtained had such a provision been incorporated in the act.

As has been stated, the validity of the tax imposed by the said act was affirmed, although it was held that the provisions requiring the payment of the expenses of collection from the tax collected were unconstitutional and void, the court saying: "We are of the opinion that such expenses cannot be taken from the gross sum collected, but that the entire tax collected must be paid to the prescribed fund, and such expenses must be otherwise provided for."

The tax collected is a state tax. It goes into a specific fund in the State Treasury, and is applied to the support of the public schools. The act in question provides certain fees and expenses. These fees, expenses, and provisions for the same were not declared to be unconstitutitutional or void, but merely the provision of the act requiring them to be paid from a certain fund. The right of the officers or persons

performing the duties imposed by this act, to the fees or compensation therein provided for, is as full and complete as though there were an imperative direction therein to the Board of State Auditors to audit and pay the same. The case, therefore, comes within the constitutional authority of the Board of State Auditors to audit and allow claims not otherwise provided for by general law, and when audited and allowed, same are required to be paid out of the general fund, in accordance with Section 127 of the Compiled Laws of 1897, making appropriation for claims allowed by the Board of State Auditors. It may be offered as a criticism, that while the general fund acquires no benefit from the taxes thus collected, it is required to sustain the burden of their collection. The constitution places it beyond the power of the Legislature to impose the burden of the collection of this tax upon the tax collected, and if paid by the State, through the audit of the Board of State Auditors, it must, under present conditions, be paid from the general fund. It is not, however, entirely true that the general fund receives no benefit from the tax thus collected, as the interest and penalties collected upon, or incident to, all specific taxes are covered into the general fund. The amount of penalties, interest, etc., paid into the general fund on account of the inheritance tax would not, however, as I am informed by the Auditor General, be sufficient to liquidate the bills for their collection which might be allowed by you.

I do not decide as to whether the County Treasurer, personally, or the County of Wayne, should receive the benefit of these fees, as that question does not seem to be presented by your letter. The bill presented, is by "Chas. A. Buhrer, Treasurer of the County of Wayne;" and if the law requires that these fees be paid into the county treasury, it is to be assumed that he has presented this claim, and will receive compensation therefor, in his official capacity. The question would, however, seem to be settled by the case of Roulo v. Board of Auditors of Wayne County, 74 Mich. 129.

Respectfully,
HORACE M. OREN,
Attorney General.

DRAIN LAW.—Where a drain traverses a township and village, the statute contemplates an assessment against the township at large for the benefits, and also the village at large for benefits.

Lansing, April 22, 1902.

Mr. Charles N. Legg, Prosecuting Attorney, Coldwater, Michigan.

Dear Sir—Your letter of the 19th inst., received, in which you state that a drain is being constructed which will traverse a township and village, and the drain commissioner proposes to assess the township at large for benefits, and also the village at large for benefits. You ask if this is proper in view of the fact that the village will be compelled to pay its pro rata share of the assessment to the township at large, and also pay the assessment against the village at large.

Section 1 of Chapter 5 of the Drain Law provides in part as follows: "The County Drain Commissioner shall apportion the per cent of the cost of construction of such drain which any township traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway," etc.

Section 4 of Chapter 2 of the Drain Law provides as follows: "In case it is proposed to run a part of a drain through an incorporated city or village the whole of such drain shall be located, established and constructed, and the assessment for its construction made by the County Drain Commissioner in the same manner as herein provided for the construction of other drains by the County Drain Commissioner and whenever the word township is used in this act it shall be construed to mean city or village as the case may be."

The statute in my opinion contemplates an additional assessment against the village at large, where a drain traverses the village, on account of benefit to the public health, convenience or welfare, or as the means of improving any highway, as well as an assessment to the township at large for a like purpose. Although no part of the drain should traverse the village, it would still be compelled to pay its proportion of the tax assessed against the township at large for benefits, and the intention of the Legislature seems to have been that a village traversed by the drain, should pay an additional tax for the increased benefits to the public health, convenience, or welfare, by reason of the construction of the drain within the village.

Respectfully yours,
HORACE M. OREN,
Attorney General.

VACANCY.—STATE BOARD OF EDUCATION.—Person appointed to fill vacancy in membership of said board does not hold for the remainder of the term, a successor to be chosen by the people at the next general election.

Lansing, April 23, 1902.

Mr. L. L. Wright, Ironwood, Michigan.

Dear Sir—I have before me yours of the 14th inst., stating that you are a member of the State Board of Education, appointed in October last, to succeed Lincoln Avery, of Port Huron, resigned, who was appointed to succeed Mr. Platt, who also resigned, and who was duly elected to the office for the term ending January 1, 1904, and requesting an opinion as to whether or not your successor in office is to be elected at the next general election, or do you, by reason of your appointment, hold for the balance of the unexpired term?

For answer thereto I would say that this identical question was passed upon by Attorney General Maynard, in an opinion to E. Finley Johnson, of Ann Arbor, Michigan, issued on the 13th of September, 1898,—a copy of which you will find on page 45 of the Attorney General's Report for the year 1899, which was sent you several days ago,—

and the conclusion reached, that a person appointed to fill a vacancy in the membership of this board did not hold for the remainder of the term, but that he could be supplanted by a successor, duly chosen by the people at a general election.

The opinion issued by Mr. Maynard was followed in the case of Mr. Johnson, and at the general election following his appointment to fill the vacancy in the office, he was elected for the full term. The opinion was subject to some criticism, so far as it appeared or was claimed to hold that the conclusion reached was applicable to Regents of the University. In so far as that opinion applies to members of the State Board of Education, I agree with the conclusion reached, although I do not think that the same rule would be applicable to the case of Regents of the University, as, in the case of those officers, express provision is made by the constitution, that, "when a vacancy shall occur in the office of Regent, it shall be filled by appointment of the Governor," and no constitutional or statutory provision, which I find, limits the tenure of office of the person so appointed to less than the remainder of the term; while, in the case of members of the State Board of Education, I am unable to find any provision for the filling of vacancies in that office, unless Section 3 of Article 8 of the Constitution has that effect, and Section 3595, C. L. 1897, makes provision for the filling of vacancies therein by election.

Respectfully,

HORACE M. OREN,
Attorney General.

HAWKERS' AND PEDDLERS' LAW.—Sections 5324 to 5331b, construed to be in force, as subsequent acts are void or unconstitutional. A merchant cannot legally peddle or employ others to peddle goods not his own manufacture, without a license so to do.

Lansing, April 30, 1902.

Mr. A. E. Richards, Prosecuting Attorney, Corunna, Michigan.

Dear Sir—I am in receipt of your communication of the 17th instant, in which you submit the following:

"First. Are Sections 5324, 5331b, C. L. 1897 (being Sections 1257-1266 Howell's Statutes) in your opinion in force at this time? It seems to me that these sections are repealed by Act No. 137, Public Acts of 1895. Act No. 248, Laws of 1897, undertook to repeal the above sections as well as Act No. 137 of 1895; the Act of 1897 was, however, held unconstitutional in Rodgers v. Circuit Judge, 115 Mich. 441, so that if Act 137 of 1895 was intended to repeal said sections of the Compiled Laws, they would now stand repealed.

Second. If the above sections are now law, is a man who is permanently located and engaged in conducting a retail grocery store in this county and who sends out a wagon, team and man among the farmers selling his goods to the farmers from the wagon, purchasing butter and

eggs from the farmers, and exchanging goods for butter and eggs from the farmers, a hawker and peddler within the meaning of said sections."

In reply would say that Sections 5324 to 5331b of the Compiled Laws of 1897, comprise the general law of this State relating to hawkers and peddlers and provide for obtaining a license from the State Treasurer upon payment of a specified fee. In 1889 Act 204 was passed, the title to which in part is as follows: "An act to authorize the township board of any township in the Upper Peninsula to license, hawkers, peddlers and pawnbrokers," etc.

In 1895 Act No. 137 was passed amending Act 204 of 1889, so as to make its provisions applicable to all townships in the State, and specifically repealing Sections 5324 to 5331b of the Compiled Laws. While this act amended Sections 1 and 2 of Act 204 of 1889, the title of the latter act was not amended. That act as amended therefore stood with a title pertaining to the licensing of hawkers and peddlers by the township board of any township in the Upper Peninsula, while the body of the act applied to all townships in the State.

In 1897 Act No. 248 was passed, which was intended to take the place of all prior laws upon this subject and specifically repealed Sections 5324 to 5331b above referred to; Act 137 of 1895, and Act 204 of 1889, but was declared unconstitutional by the Supreme Court in the case above referred to, on account of its discrimination against non-residents.

It is my opinion that Act No. 137 of the Public Acts of 1895, which attempts to amend Act 204 of the Public Acts of 1889, is void for the reason that it attempts to amend that act so that its provisions shall apply to all townships in the State, while the title of the act restricts its application to townships in the Upper Peninsula only. An amendatory act is void which attempts to incorporate in the original act matter foreign to its title. (People v. Gadway, 61 Mich. 285; Stewart v. Father Matthew Society, 41 Mich. 67; Eaton v. Walker, 76 Mich. 579.)

Act 137 of 1895 being void, I am also of the opinion that it was not the intention of the Legislature to repeal the prior law relative to hawkers and peddlers entirely, but simply as incident to the enactment of a new law to take its place; therefore the law relative to hawkers and peddlers found in Sections 5324 to 5331b of the Compiled Laws of 1897, remains in full force at the present time, and the same would be true of Act 204 of 1889 as to the licensing of hawkers, peddlers and pawnbrokers in the Upper Peninsula.

The answer to your second question it seems to me is found in that part of Section 5330 of the Compiled Laws, which provides as follows: "But no merchant shall be allowed to peddle, or to employ others to peddle, goods not his own manufacture, without the license in this chapter provided," which is broad enough, in my opinion, to include the case of one permanently located and engaged in conducting the business of a retail grocer, who sends out a wagon among the farmers, traveling from place to place, and selling goods from the wagon.

Respectfully,

HORACE M. OREN,
Attorney General.

TAX LAW.—Property owned and used by a railroad corporation cannot be taxed by a municipality, except for special assessment for local improvements.

Lansing, May 7, 1902.

Mr. A. B. Loomis, Village Assessor, Carson City, Michigan.

Dear Sir—Your letter of the 2nd inst., in which you ask if you, as assessor of your village can assess the T. S. & N., R. R. grounds, depot, warehouse, pumping-station, and three acres of land outside of their regular track width, at hand. In reply thereto would say that Section 6277, Compiled Laws of 1897, provides in part, that every railroad company shall pay a specific tax upon the property and business of such railroad corporation, and the tax so paid shall be in lieu of all other taxes upon the property of such companies, except such real estate as is owned and can be conveyed by such corporation under the laws of this State and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, but such real estate, so excepted, shall be liable to taxation in the same manner and for the same purposes as is other real estate in the several townships or municipalities within which the same may be situated. Section 3830, Compiled Laws of 1897, provides in part, that the track, right of way, depot grounds, and buildings, machine shops, rolling-stock, and all other property necessarily used in operating any railroad in this State, belonging to any railroad company, shall henceforth remain exempt for taxation for any purpose, except that the same shall be subject to special assessments for local improvements in cities and villages, and all lands owned or claimed by any such railroad company not adjoining the tract of such company, shall be subject to all taxes.

The above language makes it clear that no property owned and used by a railroad corporation can be taxed by a municipality, except for special assessments for local improvements. Applying the language of these two sections to the question raised, it is my opinion you would have no authority to assess the depot, ware-house, etc., and as to the three acres of land, you would have no right to assess such property if it is actually occupied in the exercise of the company's franchises. However, this is a matter which must be determined from the facts as they actually exist.

Respectfully yours,
HORACE M. OREN,
Attorney General.

STATE BOARD OF AGRICULTURE.—Right of to enter into contracts. Board has no power to grant owner of private property the privilege of constructing sewers across college campus. Cannot divert college property to any other use than that contemplated in the founding of the college. Contracts entered into must be upon the theory of a resulting benefit to the college.

Lansing, May 7, 1902.

Mr. A. C. Bird, Secretary, State Board of Agriculture, Agricultural College, Michigan.

Dear Sir—I have before me your communication of the 1st inst., requesting information upon the following questions:

1. "Can the State Board of Agriculture legally grant the owners of private property the privilege of constructing a sewer across the college campus?

2. Can the State Board of Agriculture legally under stipulated conditions and restrictions allow the owner of private property the privilege to connect with the college sewerage system.

3. Has the board, in your opinion, as custodian of the college and its property, the authority to divert that property to any use other than that contemplated in the founding of the college? Has said board any power to contract to furnish parties outside the campus with light and water created and supplied by the property of the college, even though the college receives compensation therefor?"

For answer thereto I would say that by statute the State Board of Agriculture is made a body corporate, capable of suing and being sued, of taking, holding and selling personal and real estate, of contracting and being contracted with, and of causing to be done all things necessary to carry out the provisions of the act relative to the organization of the Agricultural College and the establishment of a State Board of Agriculture (1835 C. L.). That board is also given general control and supervision of the State Agricultural College, the farm pertaining thereto and the lands which may be vested in the college by State Legislation, and is given plenary power to adopt such ordinances, by-laws and regulations, not in conflict with the act creating it, as it may deem necessary to secure the successful operation of the college, and to promote its designed objects. (1851 C. L. 1897.)

The authority herein given to the Board of Agriculture, of contracting and being contracted with, and of supervision over the agricultural lands, is conferred to be exercised for the benefit of the institution and to carry out the objects for which it was created. I find no provision of law directly authorizing, or denying the right to, the State Board of Agriculture to take the action which is referred to in the questions which you present. In the absence of a direct authority, conferred expressly or by necessary implication, it would follow that the board has no authority to permit the construction of sewers across the grounds of the Agricultural College, to permit persons, not connected with the institution, to connect with and use the college sewerage system, or to contract to furnish to private parties lights and water created and supplied by the property of the college, except upon the theory

of resulting benefit to the college and the carrying out of the purposes for which it was created. If the granting of the privileges and entering into of the contracts referred to in your letter are not beneficial to the institute and are not in the promotion of the purposes for which it was created, it follows as a matter of course that the board has no authority to grant those privileges or enter into these contracts. The Board of Agriculture is by statute made a corporation, and the rule is that public corporations take their duties and powers from the statute, and are limited to those therein conferred, and to those necessarily incident thereto.

Respectfully,
HORACE M. OREN,
Attorney General.

CRYSTAL FALLS.—MEMBERS OF BOARD OF EDUCATION.—Right of women to vote for. Eligibility of women to hold office on board in Crystal Falls. When a district is governed by Act 176, Public Acts of 1891, and members of Board of Education are to be elected at an annual township meeting, women are ineligible either to vote, or hold an office on said board.

Lansing, May 16, 1902.

Mrs. Frank Scadden, Crystal Falls, Michigan.

Dear Madam—I am in receipt of your communication of April 27th, in which you submit for my consideration; First, whether the women of Crystal Falls are entitled to vote for members of the school board; Second, are women eligible to positions on said board; and third, what are the necessary steps to close a saloon found open on election day?

The answer to your first question depends entirely upon the law under which the City of Crystal Falls is incorporated. Act No. 337 of the Local Acts of 1899, is an act to incorporate the City of Crystal Falls in Iron County. Section 3 of said act provides as follows:

"The City of Crystal Falls hereby incorporated, shall be governed under the provisions of Act No. 215 of the Session Laws of 1895, entitled 'An act to provide for the incorporation of cities of the fourth class,' approved May 27, 1895: Provided, That said City of Crystal Falls shall be exempt from the provisions of Chapter 32 of said Act 215 of the Session Laws of 1895, entitled 'An act to provide for the incorporation of cities of the fourth class,' approved May 27, 1895, and shall be and remain a part of township school district of Crystal Falls, heretofore incorporated under the provisions of Act No. 176 of 1891, entitled 'An act for the organization of school districts in the Upper Peninsula,' approved June 30, 1891. This act is ordered to take immediate effect. Approved March 23, 1899."

Chapter 32 of Act No. 215 of the Session Laws of 1895, above referred to, is devoted exclusively to education, but the above quoted section expressly exempts the City of Crystal Falls from the provisions of said chapter, and provides that it shall be and remain a part of town-

ship school district of Crystal Falls, incorporated under the provisions of Act No. 176 of the Session Laws of 1891.

Act No. 176 of the Session Laws of 1891, above referred to, and entitled "An act for the organization of township school districts in the Upper Peninsula," provides the law which, in my opinion, governs in all questions pertaining to schools in your district.

Section 2 of this act, which outlined the manner of electing members of the Board of Education, was amended by Act No. 104 of the Public Acts of 1893, the language of the amended section being as follows: "The officers of said district shall consist of two trustees, who together with the clerk and school inspectors of said township, shall constitute the Board of Education of said district. Said trustees shall be elected by ballot at the annual township meeting of the township, upon the same ticket and canvassed in the same manner as township officers required by law to be elected by ballot." It is evident, from this language, that the members of the Board of Education are to be elected at the annual township meeting and upon the same ticket as township officers. The act in question does not say who are qualified electors, but it is not necessary to define electors, for it has been held that women are not entitled to vote for officers elected at an annual election. In Mudge v. Stebbins, 59 Mich. 165, a similar question was involved. In that case the members of the Board of Education were to be elected at the annual city election, but upon a separate ticket from that voted for other officers. It was held that the election of members of the board at an annual election did not make such an election a "School District Meeting," and that women were not entitled to vote for members elected at such time.

The same principle is applicable in your case. The act above quoted states that the members are to be elected at the annual township meeting; hence, it is my opinion that women are not qualified to vote for members of the school board who are elected at the annual township meeting.

In disposing of the first question, I have necessarily answered the second. For, if a woman is not qualified to vote for a member of the school board, she surely would not be eligible to hold a position on the board. Even under the general school law, one must be a qualified voter before he is eligible to election or appointment. Section 47, General School Laws, Compilation 1901. Since, in my opinion, the women of your school district are not qualified to vote, they are ineligible to election or appointment as members of the Board of Education.

As to the third question, the steps necessary to close a saloon which is found open on election day, are outlined, in a general way, in Section 11455, Compiled Laws of 1897. However, the most satisfactory method for you to pursue, would be to bring the matter to the attention of the prosecuting attorney.

Respectfully yours,
HORACE M. OREN,
Attorney General.

CORPORATIONS.—In the absence of statutory provision, a corporation may provide for the issuance of both common and preferred stock. When an existing corporation wishes to amend its articles and increase its capital stock, it may make such increased stock preferred upon obtaining the consent of all of the stockholders

Lansing, May 21, 1902.

C. S. Pierce, Deputy Secretary of State, Capitol, Lansing.

Dear Sir—In regard to your question of the right of a corporation to issue both common and preferred stocks, when the statute is silent on the subject, would say that upon the organization of a company it may, unless prohibited by statute, provide for a preference of one class over another, and issue both common and preferred stock. Such action is, without doubt, legal, as there seems to be no rule of public policy which forbids it, and the consent of all parties to this action may be inferred from the acquiescence of the stockholders. Cook on Corporations (4th Ed.) par. 268; Lockhart v. Van Alstyne, 31 Mich. 76; Hamlin v. Toledo Railroad, 78 Fed. Rep. 664; Kent v. Quicksilver Mining Co. 78 N. Y. 159.

In Lockhart v. Van Alstyne, supra, Judge Cooley said in reference to the issue of preferred stocks, though not provided for by charter or statute: "There can be no reasonable objection to them if they are entered into with full knowledge on the part of all concerned."

But as soon as the corporation is organized, and in its organization the parties have decided to issue common stock only, and such stock has been issued in whole or in part, with business commenced and money invested, to make unissued stock preferred stock, or to increase the capital stock in order to issue preferred stock, cannot be done unless all of the stockholders of the corporation give their express and unqualified assent to such action. Cook on Corporations, Vol. 1, (4th Ed.) Par. 268.

If there is "no reasonable objection to issuing both common and preferred stock, if done with the full knowledge of all concerned," in the first instance, there would seem to be no valid objection to the issuance of both kinds of stock by existing companies when all of the stockholders assent thereto. When an existing corporation wishes to amend its articles in order to permit of the issuance of both common and preferred stock, in the absence of express statutory provision, the only requisite is that such action must be taken by the unanimous consent of the stockholders. "Preferred stock may, by unanimous consent, be issued although the statutes are silent concerning it." Hazelhurst v. Savannah Railroad, 43 Ga. 13; also, Higgins v. Lansing, 154 Ill. 301: Campbell v. American Co., 122 N. Y. 435; Warren v. King, 108 U. S. 389; Barnigan v. Bard, 134 U. S. 291. Hence, it is my opinion that in the absence of statutory provision, a corporation may provide in its original articles for the issuance of both common and preferred stock; and when an existing corporation wishes to amend its articles and increase its capital stock, it may make such increased stock preferred, upon obtaining the consent of all of the stockholders.

Respectfully,
HORACE M. OREN,
Attorney General.

SCHEDULE N.

Abstract of the semi-annual reports of the prosecuting attorneys of official business of the various counties, for the fiscal year ending June 30, 1902.

Offense charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number settled, etc.
A.							
Abandonment	9	4	1	1	3	.....	.....
Abduction	1	.....	.....	.....	1	.....	.....
Abortion	9	2	.....	3	2	2	.....
Adultery	74	9	10	16	20	12	7
Affray	5	.....	.....	.....	.....	5	.....
Annoyance, malicious (by writing)	1	1	.....	.....	.....	.....	.....
Animals:							
Cruelty to	112	79	12	9	6	3	3
Malicious killing of	6	1	1	.....	2	1	1
Arson, attempt to commit	33	12	7	.....	4	9	1
Assault	37	23	3	.....	8	3	.....
And battery	3,027	2,079	415	211	124	68	130
With intent to do great bodily harm	108	40	12	7	16	29	4
With intent to maim	3	1	.....	.....	1	1	.....
With intent to murder	14	5	1	.....	4	3	1
With intent to commit rape	31	19	3	.....	5	3	1
With intend to rob	4	.....	.....	.....	.....	4	.....
B.							
Badge or button, unlawful wearing, G. A. R.	1	1	.....	.....	.....	.....	.....
Banking law, violation of	3	.....	.....	.....	.....	3	.....
Barber law, violation of	9	5	1	.....	2	.....	1
Bastardy	138	35	6	11	20	8	58
Blackmail	1	1	.....	.....	.....	.....	.....
Bigamy	9	6	1	.....	.....	1	1
Bill board law, violation of	2	2	.....	.....	.....	.....	.....
Boat, unlawful removing	2	.....	2	.....	.....	.....	.....
Breaking and entering:							
Dwelling in daytime	20	12	2	.....	3	3	.....
Dwelling in night time	21	3	2	.....	5	11	.....
Granary	2	1	1	.....	.....	.....	.....
Railway car	3	3	.....	.....	.....	.....	.....
Shop, etc.	5	4	1	.....	.....	.....	.....
Shop, etc., in night time	50	33	1	.....	3	13	.....
Bribery	2	2	.....	.....	.....	.....	.....
Brokerage law, failure to file bond	1	.....	.....	.....	1	.....	.....
Burglary	152	101	12	3	7	22	7
And larceny	22	21	1	.....	.....	.....	.....
Attempt to commit	1	1	.....	.....	.....	.....	.....
In bank	1	1	.....	.....	.....	.....	.....
Buggery	2	1	.....	.....	.....	.....	1

SCHEDULE N.—*Continued.*

Offense charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number settled, etc.
C.							
Carrying concealed weapons	147	127	9	6	4	1	------
Cemetery:							
Defacing monument in	1	1	------	------	------	------	------
Mutilation of	1	------	------	1	------	------	------
Child, selling pistol to	1	------	1	------	------	------	------
Children:							
Cruelty to	14	10	1	------	1	2	------
Unlawful employment of	1	------	------	------	1	------	------
Cockfighting, aiding and abetting	15	15	------	------	------	------	------
Concealing death of bastard child	1	------	1	------	------	------	------
Conspiracy	4	2	------	------	------	1	1
To bribe	1	------	------	------	------	------	------
To defraud	2	1	------	------	2	------	------
Contempt of court	7	7	------	------	------	------	------
Counterfeit money, passing	2	------	------	------	------	2	------
Counterfeiting	1	------	------	1	------	------	------
Cigarmakers' union label	9	2	2	------	------	5	------
D.							
Dam and reservoir, malicious injury to	1	------	------	------	1	------	------
Dental law, violation of	8	6	------	------	1	------	1
Dog laws, violation of	3	3	------	------	------	------	------
Dog, killing unlawfully	1	------	1	------	------	------	------
Dog, refusing to kill sheep-killing	1	1	------	------	------	------	------
Dog fight, spectator at	1	1	------	------	------	------	------
Disorderlies, classified as:							
Begging	3	3	------	------	------	------	------
Common prostitute	463	389	56	2	5	10	1
Common prostitute, second offense	1	1	------	------	------	------	------
Deserting family	1	1	------	------	------	------	------
Disorderly, second offense	10	10	------	------	------	------	------
Disorderly, third offense	12	12	------	------	------	------	------
Drunk and disorderly	7,444	7,316	45	51	6	17	9
Drunkard	102	101	------	------	1	------	------
Drunkard, second offense	1	1	------	------	------	------	------
Fortune telling	2	------	------	------	------	2	------
Frequenting gambling house	3	2	------	------	1	------	------
Gamesters	38	17	2	5	14	------	------
Non-support of family	381	156	49	50	24	6	96
Tippler	2	2	------	------	------	------	------
Vagrancy	1,317	1,276	18	------	13	10	------
Unclassified	2,031	1,941	20	14	28	12	16
Disturbance, exciting	60	58	2	------	------	------	------
E.							
Election law, violation of	4	1	1	------	------	2	------
Elevator gates, not providing	2	------	------	------	------	------	2
Embezzlement	106	56	8	11	8	15	8
Escape, aiding prisoner to	5	4	------	------	------	1	------
Entering (without breaking):							
Building to commit crime, in daytime	1	------	------	------	1	------	------
Dwelling, with intent to steal, in daytime	5	4	1	------	------	------	------
Dwelling, with intent to commit crime, in night time	1	------	1	------	------	------	------
Store, with intent to commit crime, in night time	8	4	1	------	------	3	------
Entering fair ground unlawfully	2	2	------	------	------	------	------

SCHEDULE N.—*Continued.*

Offense charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number settled, etc.
F.							
Factory law, violation of	3	2	------	------	------	1	------
False pretenses:							
Obtaining goods under	8	4	------	1	1	1	1
Obtaining money under	32	23	1	4	4	------	------
Unclassified	114	67	8	20	12	6	1
False weights and measures, giving	1	------	1	------	------	------	------
Fire arms:							
Careless and wrongful use of	7	1	2	------	1	2	1
Aiming and careless use of	2	------	2	------	------	------	------
Pointing revolver at a person	1	------	1	------	------	------	------
Fire escape, failure to provide	2	------	------	------	------	------	2
Forgery	61	43	4	2	9	2	1
Forged instrument, uttering	4	3	------	------	1	------	------
Fugitive from justice	1	------	------	------	------	------	1
G.							
Game and fish law, violation of, classified as:							
Deer, killing out of season	12	8	1	------	------	------	3
Deer, killing of, without license	5	4	------	------	------	1	------
Deer, killing with aid of dog	1	1	------	------	------	------	------
Fawn deer, unlawfully capturing	1	------	------	------	1	------	------
Fish, unlawful spearing of	3	3	------	------	------	------	------
Fishing, unlawful	61	51	3	2	------	3	2
Fish nets, condemnation of	4	4	------	------	------	------	------
Fish nets, molesting	1	------	------	------	------	1	------
Fox squirrel, unlawful killing of	1	1	------	------	------	------	------
Fur bearing animals, violation of law relating to	1	1	------	------	------	------	------
Rabbits, hunting with ferret in Wayne county	12	10	2	------	------	------	------
Song birds, killing	2	2	------	------	------	------	------
Song birds, unlawful possession of bodies of	5	5	------	------	------	------	------
Trout, unlawful catching of	3	------	------	------	------	3	------
Venison, unlawful selling	1	1	------	------	------	------	------
Unclassified violations	226	185	22	1	16	1	1
Gaming rooms, devices, etc., keeping of	54	37	1	2	1	13	------
H.							
Hawkers' and peddlers' law, violation of:							
Peddling without license	6	3	1	------	------	1	1
Unclassified	6	1	1	------	------	4	------
Health law, violation of:							
Physician, failure to report contagious diseases	2	1	1	------	------	------	------
Unclassified	8	8	------	------	------	------	------
Horse shoers' law, violation of	2	------	------	2	------	------	------
Horse, docking unlawfully	1	------	------	------	------	------	1
Killing	1	------	------	------	1	------	------
Overdriving	4	4	------	------	------	------	------
Stealing	23	20	------	1	------	2	------
Unhitching and driving away	7	6	------	------	1	------	------
Hotel law, violation of, classified as:							
Defrauding hotel keeper	70	50	4	8	------	1	7
Intent to defraud hotel keeper	1	------	------	------	------	------	1
Unclassified	1	1	------	------	------	------	------
Hunting on land without consent of owner	8	7	1	------	------	------	------
I.							
Incest	2	------	------	------	1	1	------
Indecency, classified as:							
Criminally knowing a female under 16	1	------	1	------	------	------	------
Debauching boy under 15	1	------	1	------	------	------	------
Enticing away female under 16	1	1	------	------	------	------	------

SCHEDULE N.—*Continued.*

Offense charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number settled, etc.
Indecency, classified as.—*Continued:*							
Indecent exposure of person	26	15	1	3	4	2	1
Indecent language, using	217	181	7	8	13	7	1
Indecent liberties with child, taking	20	8	2	2	3	5	.....
Indecent and obscene literature, selling of	1	1	.....	.....	.....	.....	.....
Indecent pictures, exposing	8	8	.....	.....	.....	.....	.....
Insulting a woman	1	.....	1	.....	.....	.....	.....
Keeping bawdy house, resort for prostitutes	26	21	2	1	1	1	.....
Keeping house of ill-fame	32	11	6	1	2	11	1
Lewd and lascivious cohabitation	41	16	2	4	6	13	.....
Permitting and receiving female in house of prostitut'n	3	3	.....	.....	.....	.....	.....
Soliciting female to enter house of ill-fame	2	.....	.....	.....	.....	2	.....
Unlawful cohabitation	5	1	.....	.....	2	.....	2
Unclassified	1	1	.....	.....	.....	.....	.....
J.							
Jail breaking	6	6	.....	.....	.....	.....	.....
Jail, attempt to break	2	2	.....	.....	.....	.....	.....
Jail, unlawfully conveying tools into	1	1	.....	.....	.....	.....	.....
Juvenile offenders:							
Unclassified	193	178	7	1	3	3	1
K.							
Kidnapping	2	.....	.....	.....	2	.....	.....
L.							
Labor law, violation of	8	4	2	1	.....	.....	1
Larceny, classified as:							
Attempt to commit	2	.....	2	.....	.....	.....	.....
By conversion	46	26	3	1	.....	6	10
From building, etc.	5	5	.....	.....	.....	.....	.....
From dwelling	20	17	3	.....	.....	.....	.....
From dwelling in daytime	40	26	3	.....	4	2	5
From dwelling in daytime, attempt to commit	1	1	.....	.....	.....	.....	.....
From factory	1	1	.....	.....	.....	.....	.....
From mill in night time	1	.....	.....	.....	1	.....	.....
From the person	101	39	12	6	16	27	1
From the person, attempt to commit	1	1	.....	.....	.....	.....	.....
From railroad car	7	.....	7	.....	.....	.....	.....
From shop	4	4	.....	.....	.....	.....	.....
From store, etc.	3	3	.....	.....	.....	.....	.....
From store in daytime	22	17	1	.....	2	.....	2
Of railroad tickets	1	1	.....	.....	.....	.....	.....
Of timber	8	8	.....	.....	.....	.....	.....
Grand	201	121	12	10	23	33	2
Juvenile	16	13	.....	.....	2	1	.....
Simple	2,686	2,008	315	95	126	92	50
Statutory	5	3	.....	1	1	.....	.....
Unclassified	20	19	.....	.....	1	.....	.....
Local option law, violation of	28	3	.....	.....	14	8	3
Logs, unlawfully picking up	3	.....	.....	.....	3	.....	.....
Libel	8	1	.....	2	2	.....	3
License, shoeing horses without	1	.....	.....	.....	1	.....	.....
Liquor law, violation of, classified as:							
Druggist, failure to record sale of liquor	2	.....	.....	.....	.....	2	.....
Druggist, selling liquor as a beverage	1	.....	.....	.....	.....	1	.....
Druggist, unlawful sale of liquor by	12	4	2	1	2	3	.....

SCHEDULE N.—*Continued.*

Offense charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number settled, etc.
Liquor law, violation of, classified as.—*Continued:*							
Furnishing liquor to drunkard	4	2	.....	1	.....	.....	1
Furnishing liquor to intoxicated person	4	.....	.....	.....	.....	4	.....
Furnishing liquor to prisoners	1	1	.....	.....	.....	.....	.....
Obstructing view of bar	58	51	4	.....	1	2	.....
Saloon open after hours	23	8	2	1	1	11	.....
Saloon open on election day	3	3	.....	.....	.....	.....	.....
Saloon open on legal holiday	33	33	.....	.....	.....	.....	.....
Saloon open on Sunday	75	58	8	.....	1	7	1
Selling liquor without giving bond	1	.....	1	.....	.....	.....	.....
Selling liquor without license	70	33	6	5	5	2	19
Selling liquor to minors	24	16	3	1	1	3	.....
Unclassified	311	229	13	4	20	25	20
M.							
Manslaughter	15	6	3	.....	3	2	1
Mayhem	5	1	.....	1	.....	3	.....
Medical law, violation of, classified as:							
Practicing medicine without a license	12	8	1	3	.....	.....	.....
Unclassified	3	3	.....	.....	.....	.....	.....
Minor:							
Allowing minor to remain in saloon and pool room	4	3	.....	.....	1	.....	.....
Buying goods of, etc., unlawfully	8	6	2	.....	.....	.....	.....
Purchasing junk from, unlawfully	5	5	.....	.....	.....	.....	.....
Selling cigarettes to	3	2	1	.....	.....	.....	.....
Misdemeanor	8	8	.....	.....	.....	.....	.....
Murder, classified as:							
Attempt to	3	2	.....	.....	.....	.....	1
First degree	2	2	.....	.....	.....	.....	.....
Second degree	3	3	.....	.....	.....	.....	.....
Unclassified	36	23	8	.....	2	3	.....
N.							
Nature, crime against	2	1	.....	.....	.....	1	.....
O.							
Officer:							
Impersonating an	2	1	.....	.....	.....	1	.....
Refusing to assist	1	.....	.....	.....	.....	1	.....
Resisting an	41	20	1	1	3	14	2
Oil inspection law, violation of	2	2	.....	.....	.....	.....	.....
Orchard and vineyard, entering upon, without consent of owner	20	19	.....	1	.....	.....	.....
P.							
Peace breach	33	72	7	1	.....	.....	3
Perjury	21	9	4	.....	4	3	1
Pharmacy law, violation of	7	3	1	.....	3	.....	.....
Poison, exposing	3	2	.....	1	.....	.....	.....
Poisoning	.....	.....	.....	.....	.....	.....	.....
Live stock	2	1	.....	.....	.....	1	.....
Well	1	.....	1	.....	.....	.....	.....
Polygamy	3	3	.....	.....	.....	.....	.....
Poundmaster, rescuing animal from	2	1	1	.....	.....	.....	.....
Profanity	30	26	1	.....	1	.....	2
Property, personal, offenses against, classified as:							
Destroying	10	8	1	.....	.....	.....	1
Buying stolen	1	1	.....	.....	.....	.....	.....
Chattel mortgaged, concealing	10	2	.....	1	1	5	1
Chattel mortgaged, destroying	1	1	.....	.....	.....	.....	.....

SCHEDULE N.—*Continued.*

Offense charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number settled, etc.
Property, personal, etc.—*Continued:*							
Chattel mortgaged, embezzlement of	1	1					
Chattel mortgaged, fraudulently disposing of	12	2	1	6		3	
Chattel mortgaged, removing	3	2				1	
Concealing stolen	7	7					
Contract property, disposing of	1	1					
Contract property, unlawfully selling	2					1	1
Destroying, maliciously	31	20			9	2	
Disposing of fraudulently	1					1	
Injuring, maliciously	75	51	11	5	3	3	2
Receiving stolen	59	35	11	2	7	3	1
Property real, offenses against, classified as:							
Building, destroying maliciously	36	17	12	2	1	1	3
Building, marring and defacing	3	3					
Dwelling, maliciously injuring	71	35	12	3		14	7
Fence, malicious injury to	2		1	1			
Malicious destruction of	32	26	2	1	1	1	1
Maliciously injuring	84	66	5	2	5	6	
Trees, cutting marks off	1	1					
Trees, destroying shade	1	1					
Trees, malicious injury to	3		3				
Public disturbance, creating	8	8					
Public meeting, disturbing	11	9		2			
Pure food law, violation of, classified as:							
Illegally exposing for sale and selling oleomargarine	12	2			9		1
Milk, selling adulterated	3	1	2				
Unclassified	68	23	1		43	1	
Q.							
Quarantine law, violation of	2	2					
R.							
Rape	103	43	17	2	15	23	3
Railroad laws, violation of, classified							
Endangering lives of railway employées, etc	2	2					
Entering freight car to obtain carriage	68	61		5	2		
Gates, interfering with	3	2		1			
Trains, exciting disturbance on	7	3	4				
Trains, jumping on, stealing ride, on, etc	263	255		6	2		
Track, obstructing	8	3	3		2		
Trains, wrecking	3	1	1		1		
Unclassified	33	32			1		
Religious meeting, disturbing	39	30	3		3	3	
Robbery, classified as:							
Armed with dangerous weapon	2	2					
Attempted	5	2				3	
Highway	1					1	
Unclassified	19	11	2		1	5	
S.							
Slander	134	77	22	3	6	15	11
Second offense	1	1					
School law, violation of, classified as:							
Not sending children to school	28	21	6				1
Unclassified	66	34	2		17	1	12
Search warrant	52	22	12	11			7
Seduction	20	5		1	5	6	3
Sodomy	12	5			1	3	3
Stealing from a grave	1	1					

SCHEDULE N.—*Concluded.*

Offense charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number settled, etc.
Sunday law, violation of, classified as:							
Keeping place of business open on	9	1	------	------	3	5	------
Playing baseball on	18	------	2	------	------	------	16
Unclassified	10	7	3	------	------	------	------
Surety to keep the peace	50	37	3	5	3	1	1
T.							
Trespass, classified	6	4	------	1	------	1	------
Agricultural College lands, on	1	------	------	------	------	1	------
Cutting and removing timber	5	4	------	------	------	1	------
Wilful and malicious	83	53	5	6	8	11	------
With dog and gun	1	1	------	------	------	------	------
Tax law, violation of, classified as:							
Refusing to spread tax	1	1	------	------	------	------	------
Unclassified	1	1	------	------	------	------	------
Telephone line, obstructing	2	2	------	------	------	------	------
Threats, making	81	40	12	11	5	1	12
Truancy	267	235	12	------	9	4	7
Y.							
Yellows law, violation of	10	10	------	------	------	------	------
Totals	23,661	19,376	1,400	679	840	765	601

SCHEDULE O.

Recapitulation of the semi-annual reports of the Prosecuting Attorneys of the official business of their respective counties, during the fiscal year ending June 30, 1902.

Counties.	Number prosecuted.			Number convicted.			Number acquitted.			Number dismissed on payment of costs.			Number nolle prossed.			Number discharged on examination.			Number settled, etc.		
	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.
Alcona	6	11	17	2	7	9	.....	1	1	.....	.....	.....	.....	.....	.....	1	3	4	3	.....	3
Alger	18	12	30	14	11	25	.....	1	1	1	.....	1	.....	.....	.....	2	.....	2	1	.....	1
Allegan	94	124	218	91	119	210	.....	.....	.....	1	3	4	2	2	4	.....	.....	.....	.....	.....	.....
Alpena	81	46	127	45	31	76	36	11	47	.....	2	2	.....	.....	.....	.....	1	1	.....	1	.....
Antrim	24	21	45	17	19	36	3	1	4	1	.....	1	.....	.....	.....	2	1	3	1	.....	.....
Arenac	8	20	28	8	20	28	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Baraga	39	31	70	31	29	60	1	1	2	4	1	5	2	.....	2	1	.....	1	.....	.....	.....
Barry	40	47	87	34	40	74	1	4	5	.....	.....	.....	5	1	6	.....	.....	.....	.....	2	2
Bay	471	430	901	411	390	801	16	6	22	35	.....	35	.....	.....	.....	9	16	25	.....	18	18
Benzie	13	8	21	7	7	14	4	1	5	.....	.....	.....	.....	.....	.....	2	.....	2	.....	.....	.....
Berrien	159	108	267	120	78	198	6	1	7	24	18	42	4	8	12	1	.....	1	4	3	7
Branch	41	42	83	31	35	66	1	2	3	.....	.....	.....	8	4	12	1	1	2	.....	.....	.....
Calhoun	258	296	554	210	261	471	6	10	16	.....	.....	.....	.....	.....	.....	33	24	57	9	1	10
Cass	107	88	195	104	80	184	3	1	4	.....	4	4	.....	.....	.....	.....	1	1	.....	2	2
Charlevoix	28	20	48	18	19	37	2	1	3	6	.....	6	.....	.....	.....	.....	.....	.....	2	.....	2
Cheboygan	53	44	97	42	37	79	.....	3	3	.....	.....	.....	7	4	11	4	.....	4	.....	.....	.....
Chippewa	143	97	240	88	67	155	18	9	27	2	1	3	19	11	30	6	7	13	10	2	12
Clare	19	13	32	14	7	21	1	.....	1	.....	.....	.....	4	2	6	.....	1	1	.....	3	3
Clinton	64	61	125	62	60	122	1	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	1	2
Crawford	18	34	52	15	28	43	2	3	5	.....	.....	.....	1	3	4	.....	.....	.....	.....	.....	.....
Delta	44	14	58	32	11	43	8	2	10	4	.....	4	.....	1	1	.....	.....	.....	.....	.....	.....
Dickinson	227	119	346	211	115	326	14	2	16	.....	.....	.....	2	2	4	.....	.....	.....	.....	.....	.....
Eaton	233	308	541	213	290	503	5	2	7	3	1	4	7	5	12	3	8	11	2	2	4
Emmet	40	38	78	33	23	56	4	7	11	1	.....	1	1	5	6	1	2	3	.....	1	1
Genesee	246	324	570	198	272	470	.....	2	2	5	2	7	15	25	40	15	18	33	13	5	18
Gladwin	15	11	26	13	2	15	.....	3	3	.....	1	1	2	4	6	.....	1	1	.....	.....	.....
Gogebic	111	69	180	73	40	113	18	16	34	.....	.....	.....	.....	.....	.....	8	4	12	12	9	21
Gd. Traverse	24	13	37	18	11	29	1	.....	1	1	.....	1	2	1	3	2	.....	2	.....	1	1
Gratiot	57	81	138	53	76	129	2	1	3	.....	4	4	2	.....	2	.....	.....	.....	.....	.....	.....
Hillsdale	67	23	90	47	17	64	4	1	5	3	1	4	9	3	12	.....	.....	.....	4	1	5
Houghton	366	324	690	314	278	592	17	22	39	8	2	10	11	13	24	2	4	6	14	5	19
Huron	19	15	34	16	14	30	3	1	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ingham	446	653	1,099	410	606	1,016	9	9	18	10	4	14	12	1	13	3	1	4	2	32	34
Ionia	113	130	243	69	100	169	9	8	17	7	1	8	8	.....	8	12	7	19	8	14	22

Iosco	28	29	57	25	28	53	1	1	2				1		1	1		1				
Iron	34	22	66	29	28	57	2	1	3										3	3	6	
Isabella	77	56	133	60	48	108	2	2	4	5	3	8	3	2	5	2	1	3	5		5	
Jackson	498	494	992	366	412	778	9	3	12	46	32	78	2	1	3	71	45	116	4	1	5	
Kalamazoo	461	454	915	444	414	858	2	3	5	1	23	24	2	6	8	1	1	2	11	7	18	
Kalkaska	11	28	39	8	27	35	1		1					1	1	1		1	1		1	
Kent	291	290	581	241	259	500	28	11	39				20	13	33		2	2	2	5	7	
Keweenaw	6	10	16	6	6	12		4	4													
Lake	8	14	22	6	12	18	1	1	2					1	1				1		1	
Lapeer	73	111	184	67	105	172	1		1		1	1	1		1	1	2	3	3	3	6	
Leelanau	15	6	21	9	3	12		2	2				4		4	1		1	1	1	2	
Lenawee	143	99	242	133	91	224		5	5	1	1	2	2	1	3	6		6	1	1	2	
Livingston	43	63	106	26	55	81	5	3	8		1	1	5		5	2	4	6	5		5	
Luce	18	16	34	13	13	26	2		2		1	1							3	2	5	
Mackinac	40	29	69	28	21	49	6	6	12				2		2	1	2	3	3		3	
Macomb	122	112	234	115	110	225	1	1	2	2		2	3		3	1		1		1	1	
Manistee	158	114	272	132	88	220	1	4	5	1	7	8	16	14	30	6	1	7	2		2	
Marquette	412	359	771	382	336	718	7	2	9	6		6	3	5	8	11	5	16	3	11	14	
Mason	33	39	72	30	22	52	2		2							1	17	18				
Mecosta	23	24	47	21	18	39	1		1					6	6				1		1	
Menominee	212	194	406	177	156	333	1		1				19		19	15	38	53				
Midland	26	30	56	18	19	37	3	1	4	1	6	7	2	3	5	2	1	3				
Missaukee	10	10	20	10	10	20																
Monroe	65	55	120	61	49	110		5	5	2	1	3				2		2				
Montcalm	115	59	174	83	45	128	5	1	6	2		2	19	10	29	6	3	9				
Montmorency	13		13	4		4	8		8							1		1				
Muskegon	194	210	404	131	175	306	13	6	19	11	3	14	28	15	43	2	1	3	9	10	19	
Newaygo	8	9	17	5	6	11	1	1	2							2	2	4				
Oakland	183	260	443	179	245	424	2	2	4				2	5	7		8	8				
Oceana	32	17	49	30	16	46	1		1				1	1	2							
Ogemaw	15	19	34	9	13	22	3	3	6		3	3	3		3							
Ontonagon	1	5	6	1	3	4								2	2							
Osceola	40	37	77	35	33	68	2		2	1	1	2		1	1	2	1	3		1	1	
Oscoda	2	2	4		2	2	1		1							1		1				
Otsego	60	79	139	38	50	88	3	8	11	4	3	7	12	10	22	3	8	11				
Ottawa	141	235	376	119	226	345	10	4	14	10	2	12	1	2	3				1	1	2	
Presque Isle	39	32	71	23	16	39	3	2	5	1	6	7	7		7	4	5	9	1	3	4	
Roscommon	29	25	54	25	19	44		1	1	2	3	5	1	2	3	1		1				
Saginaw	333	286	619	233	180	413	19	12	31	22	26	48	49	55	104	4	2	6	6	11	17	
Sanilac	26	26	52	12	15	27	4	4	8	1		1	3	6	9	6		6		1	1	
Schoolcraft	37	20	57	24	12	36	3	2	5	3	1	4	4	2	6	3	2	5		1	1	
Shiawassee	231	246	527	246	229	475	5	5	10		5	5	2	4	6	26	2	28	2	1	3	
St. Clair	267	272	539	225	233	458	14	14	28	8	3	11	16	20	36	1	2	3	3		3	
St. Joseph	60	63	123	53	43	96	2	4	6	1	11	12	3	2	5		2	2	1	1	2	
Tuscola	54	69	123	45	62	107	1	2	3				1		1	4		4	3	5	8	
Van Buren	148	96	244	91	65	156	5	5	10	3		3	15	14	29	25	8	33	9	4	13	
Washtenaw	324	564	888	289	527	816	3	1	4	7	8	15	18	16	34	1	4	5	6	8	14	
Wayne	3,101	2,576	5,677	2,289	1,887	4,176	407	343	750	108	111	219	92	38	130	77	89	166	128	108	236	
Wexford	59	50	109	45	39	84	3	4	7	5	2	7	1	1	2	2	3	5	3	1	4	
Total	12,061	11,600	23,661	9,705	9,671	19,376	789	611	1,400	370	309	679	486	354	840	404	361	765	307	294	601	

SCHEDULE P.

List of Prosecuting Attorneys, by Counties, with name of County Seat and address of prosecutor.

Counties.	County seat.	Prosecuting attorneys.	Post-office.
Alcona	Harrisville	John H. Killmaster	Harrisville.
Alger	Au Train	Henry B. Freeman	Munising.
Allegan	Allegan	Charles Thew	Allegan.
Alpena	Alpena	Joseph Cavanagh	Alpena.
Antrim	Bellaire	Fitch R. Williams	Elk Rapids.
Arenac	Standish	Mortimer D. Snow	Standish.
Baraga	L'Anse	Philip R. McKernan	L'Anse.
Barry	Hastings	Charles H. Thomas	Hastings.
Bay	Bay City	Edward E. Anneke	Bay City.
Benzie	Frankfort	Mervin M. Larmouth	Thompsonville.
Berrien	St. Joseph	Ira W. Riford	Benton Harbor.
Branch	Coldwater	Charles N. Legg	Coldwater.
Calhoun	Marshall	Jesse M. Hatch	Marshall.
Cass	Cassopolis	Ulysses S. Eby	Cassopolis.
Charlevoix	Charlevoix	Alfred B. Nicholas	East Jordan.
Cheboygan	Cheboygan	George E. Frost	Cheboygan.
Chippewa	St. Ste. Marie	John P. Conrick	St. Ste. Marie.
Clare	Harrison	George J. Cummins	Harrison.
Clinton	St. Johns	William M. Smith	St. Johns.
Crawford	Grayling	Oscar Palmer	Grayling.
Delta	Escanaba	John Commiskey	Escanaba.
Dickinson	Iron Mountain	Ransom L. Hammond	Iron Mountain.
Eaton	Charlotte	Lewis J. Dann	Charlotte.
Emmet	Harbor Springs	Clay E. Call	Petoskey.
Genesee	Flint	George D. Williams	Flint.
Gladwin	Gladwin	Frank L. Prindle	Gladwin.
Gogebic	Bessemer	Samuel S. Cooper	Bessemer.
Grand Traverse	Traverse City	Fred H. Pratt	Traverse City.
Gratiot	Ithaca	Julius B. Kirby	Ithaca.
Hillsdale	Hillsdale	Wm. H. Frankhauser	Hillsdale.
Houghton	Houghton	Oscar J. Larson	Calumet.
Huron	Bad Ax	Paul Woodworth	Bad Axe.
Ingham	Mason	Arthur J. Tuttle	Leslie.
Ionia	Ionia	William K. Clute	Ionia.
Iosco	Tawas City	Charles A. Jahraus	Tawas City.
Iron	Crystal Falls	Charles H. Watson	Crystal Falls.
Isabella	Mt. Pleasant	Cyrus E. Russell	Mt. Pleasant.
Jackson	Jackson	Forest C. Badgley	Jackson.
Kalamazoo	Kalamazoo	Sheridan F. Master	Kalamazoo.
Kalkaska	Kalkaska	Ernest C. Smith	Kalkaska.
Kent	Grand Rapids	William B. Brown	Grand Rapids.
Keweenaw	Eagle River	William J. MacDonald	Calumet.
Lake	Baldwin	Hal L. Cutter	Luther.
Lapeer	Lapeer	Enoch E. White	Lapeer.
Leelanau	Leland	Archibald F. Bunting	Empire.
Lenawee	Adrian	Jacob N. Sampson	Adrian.
Livingston	Howell	Edmund C. Shields	Howell.
Luce	Newberry	Louis H. Fead	Newberry.
Mackinac	St. Ignace	James McNamara	St. Ignace.
Macomb	Mt. Clemens	Franz C. Kuhn	Mt. Clemens.

SCHEDULE P.—*Concluded.*

Counties.	County seat.	Prosecuting attorneys.	Post-office.
Manistee	Manistee	Frank E. Chamberlain	Manistee.
Marquette	Marquette	Frank A. Bell	Negaunee.
Mason	Ludington	Addison A. Keiser	Ludington.
Mecosta	Big Rapids	Albert B. Cogger	Big Rapids.
Menominee	Menominee	Willis N. Mills	Menominee.
Midland	Midland	Ray Hart	Midland.
Missaukee	Lake City	Francis O. Gaffney	Lake City.
Monroe	Monroe	Thornton Dixon	Dundee.
Montcalm	Stanton	Frank A. Miller	Stanton.
Montmorency	Atlanta	George S. Wilson	Atlanta.
Muskegon	Muskegon	Charles B. Cross	Muskegon.
Newaygo	Newaygo	George Luton	Newaygo.
Oakland	Pontiac	Kleber P. Rockwell	Pontiac.
Oceana	Hart	Wallace Foote	Hart.
Ogemaw	West Branch	Evender M. Harris	West Branch.
Ontonagon	Ontonagon	William R. Adams	Ontonagon.
Osceola	Hersey	B. Newton Savidge	Reed City.
Oscoda	Mio	John A. McMahon	Mio.
Otsego	Gaylord	Albert M. Hilton	Gaylord.
Ottawa	Grand Haven	Patrick H. McBride	Holland.
Presque Isle	Rogers	Edwin T. Reed	Rogers.
Roscommon	Roscommon	Charles L. DeWaele	Roscommon.
Saginaw	Saginaw	John F. O'Keefe	Saginaw.
Sanilac	Sanilac Centre	Fred A. Farr	Sanilac Centre.
Schoolcraft	Manistique	Virgil I. Hixson	Manistique.
Shiawassee	Corunna	Austin E. Richards	Corunna.
St. Clair	Port Huron	Burt D. Cady	Port Huron.
St. Joseph	Centreville	Wilber F. Thomas	White Pigeon.
Tuscola	Caro	Walter S. Wixson	Caro.
Van Buren	Paw Paw	David Anderson	Paw Paw.
Washtenaw	Ann Arbor	John L. Duffy	Ann Arbor.
Wayne	Detroit	Ormond F. Hunt	Detroit.
Wexford	Cadillac	Fred C. Wetmore	Cadillac.

SCHEDULE Q.

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